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1 Thursday, 13 June, 1946

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4 INTERNATIONAL MILITARY TRIBUNAL
5 FOR THE FAR EAST
6 Court House of the Tribunal
7 War Ministry Building
8 Tokyo, Japan

9 The Tribunal met, pursuant to adjournment,
10 at 0930.

11 - - -

12
13 Appearances:

14 For the Tribunal, same as before with the
15 addition of: THE HONORABLE MR. JUSTICE DELFIN JARANILLA,
16 Member from the Commonwealth of the Philippines.

17 For the Prosecution Section, same as before.

18 For the Defense Section, same as before.

19
20 - - -

21 (English to Japanese and Japanese to English
22 interpretation was made by OKA, Takashi and
23 TSUCHIYA, Jun, Hidekazu Hayashi acting as
24 Monitor.)
25

1 THE PRESIDENT: This Tribunal is now fully
2 constituted for the first time. We have with us today
3 the Honorable Mr. Justice Delfin Jarenilla, the repre-
4 sentative of the Commonwealth of the Philippines.

5 All the accused are present except OKAWA and
6 MATSUOKA who appear by their respective counsel.

7 Are there any additional appearances of counsel?

8 MR. UZAWA: Mr. President, I am UZAWA, Somei.

9 I would like to present additional defense counsel:

10 OHTA, Kinjiro, counsel for the defendant

11 DOHIHARA, Kenji;

12 ITO, Kiyoshi, counsel for the defendant MATSUI;

13 OKAMOTO, Toshio, counsel for the defendant

14 MINAMI;

15 SHIMANOUCHI, Ryuki, counsel for the defendant

16 OSHIMA; and

17 NARITOMI, Nobuo, counsel for the defendant

18 SHIRATORI.

19 That is all.

20 THE PRESIDENT: Request for changes in the
21 record.

22 MR. YAMAOKA: Your Honor, I have some additional
23 appearances to note, if I may.

24 May it please the Tribunal, I have the honor at
25 this time of presenting additional American defense

1 counsel who have duly filed their appearances with the
2 clerk.

3 Mr. Michael Levin, of Milwaukee, Wisconsin, a
4 member of the bars of the State of Wisconsin and the
5 Supreme Court of the United States, counsel for SUZUKI,
6 Teiichi.

7 Lieutenant Aristides G. Lazarus, United States
8 Marine Corps, of Mount Vernon, New York, member of the
9 New York bar, counsel for Field Marshal HATA, Shunroku.

10 Mr. William J. McCormack of Chicago, Illinois,
11 member of the Illinois bar, counsel for General MINAMI,
12 Jiro.

13 Mr. Roger F. Cole of Detroit, Michigan, member
14 of the Michigan bar, counsel for General MUTO, Akira.

15 Mr. John G. Brannon of Kansas City, Missouri,
16 member of the Missouri bar, counsel for Admiral NAGANO,
17 Osami.

18 THE PRESIDENT: We have requests for changes in
19 the record by the British and Chinese prosecutors. If
20 there are no objections, these changes will be made.

21 The changes will be made.

22 Now, are there any other matters to be brought
23 before the Tribunal before we proceed with the trial?

24 Mr. Justice Mansfield.

25 MR. JUSTICE MANSFIELD: If the Tribunal please,

1 in accordance with the order made by the Tribunal on
2 the 4th of June last, I proceed to tender the following
3 documents to the Court:

4 The Convention for the Pacific Settlement of
5 International Disputes, signed at The Hague on the 29th
6 of July, 1899.

7 THE PRESIDENT: Exhibit 1.

8 MR. JUSTICE MANSFIELD: Exhibit 12, I believe,
9 your Honor.

10 THE PRESIDENT: Exhibit 12.

11 MR. JUSTICE MANSFIELD: Yes.

12 MR. MATTICE: May it please the Tribunal, on
13 behalf of defense counsel, may I inquire what counsel
14 means by "tendering" the exhibits?

15 We are accustomed to an exhibit being identified
16 and then to an exhibit being offered in evidence. What
17 is meant by "tendering"? I confess we are at sea.

18 MR. JUSTICE MANSFIELD: In accordance with the
19 order which I will now proceed to read, I am offering
20 these documents in evidence. The order states:

21 "The Tribunal gives liberty to the prosecution
22 to produce the documents listed in Schedule B of the
23 application without formal proof thereof but subject,
24 of course, to all just exceptions involving the accuracy,
25 relevancy and materiality of the documents. Subject to

1 such exceptions, the Tribunal will not require proof of
2 the authenticity of the documents and shall receive them
3 in evidence."

4 MR. MATTICE: Understanding, then, from what
5 counsel has said, that the documents are being offered
6 in evidence, and because of the fact that these documents,
7 or copies thereof, were delivered to us yesterday, and
8 we have not had time even to read them, may we reserve
9 the right to interpose such objections as may occur to
10 us at a later time?

11 MR. JUSTICE MANSFIELD: I would point out to
12 the Tribunal that these documents were delivered to the
13 defense counsel last Saturday.

14 MR. MATTICE: I can only speak for myself, if
15 the Tribunal please; but, here they are, and I received
16 them yesterday.

17 MR. JUSTICE MANSFIELD: The next document which
18 I produce is The Hague Convention No. I for the Pacific
19 Settlement of International Disputes, signed at The
20 Hague on the 18th of October, 1907. I ask that it be
21 marked Exhibit 13.

22 The next document: The Hague Convention No. III,
23 relative to the Opening of Hostilities, signed at The
24 Hague on the 18th of October, 1907. I ask that that be
25 marked Exhibit 14.

1 MR. MATTICE: May I inquire, if the Tribunal
2 please, what the ruling is on our request that we be
3 permitted to interpose such objections as may occur to
4 us when we have had time to peruse these documents?

5 THE PRESIDENT: The rule has been read.
6 It preserves your rights. There is really no need to
7 preserve them further.

8 MR. MATTICE: Very well, sir.

9 THE PRESIDENT: But any objection you make here
10 is now noted.

11 MR. MATTICE: Very well.

12 MR. JUSTICE MANSFIELD: The next document,
13 which I ask to be marked Exhibit 15 -- Treaties Governing
14 Land Warfare; Hague IV, the 18th of October, 1907,
15 containing the Customs of War on Land; the Geneva
16 Convention of 1929 relative to the Treatment of Prisoners
17 of War; and The Hague Convention No. V respecting the
18 Rights and Duties of Neutral Powers and Persons in War
19 on Land, signed at The Hague on the 18th day of October,
20 1907;

21 The next document, which I ask to be marked
22 Exhibit 16, is The Hague Convention No. X relative to
23 the Principles of Maritime Warfare;

24 The next document, which I ask to be marked
25 Exhibit 17, is The Convention and Final Protocol for the

1 Suppression of the Abuse of Opium and other Drugs, signed
2 at The Hague on the 23d of January, 1912 and the 9th of
3 July, 1913;

4 The next document, which I ask to be marked
5 Exhibit 18: The League of Nations Second Opium Conference
6 Convention, signed at Geneva on the 19th of February,
7 1925;

8 Exhibit 19: The Convention relating to Narcotic
9 Drugs, signed at Geneva on the 13th of July, 1931.

10 CAPTAIN KLEIMAN: If it please the Court, may
11 I note my objection on behalf of the defendant HIRANUMA
12 with respect to all the documents that are, have been,
13 and will be introduced by Justice Mansfield, on the ground
14 that they are incompetent, irrelevant and immaterial,
15 so that I will not have to disturb Justice Mansfield at
16 a later period?

17 THE PRESIDENT: Counsel's objection is noted.

18 MR. JUSTICE MANSFIELD: Exhibit 20 is the
19 Geneva Convention of 1929 relative to the Treatment of
20 the Wounded and the Sick, known as The Red Cross Convention;

21 Exhibit 21: The Treaty of Portsmouth, the 15th
22 of September, 1905;

23 Exhibit 22: The Agreement effected by exchange
24 notes between the United States and Japan, signed on the
25 30th of November, 1908, declaring their policy in the

1 Far East;

2 Exhibit 23: The Treaty of Peace between Allied
3 and Associated Powers and Germany, signed at Versailles
4 on the 28th of June, 1919 and including the Covenant of
5 the League of Nations;

6 Exhibit 24: The Treaty between the British
7 Commonwealth of Nations, France, Japan and the United
8 States of America relating to their Insular Possessions
9 and Insular Dominions in the Pacific Ocean, dated the
10 13th of December, 1921;

11 Exhibit 25: The Supplement to the Treaty of
12 December 13, 1921 between the British Commonwealth of
13 Nations, France, Japan and the United States of America
14 relating to their Insular Possessions and Insular
15 Dominions in the Pacific Ocean, February 6, 1922;

16 Exhibit 26: Identic Communication made to the
17 Netherlands Government on the 4th of February, 1922 on
18 behalf of the British Commonwealth of Nations and also
19 'mutatis mutandis' on behalf of the other Powers signatory
20 to the Quadruple Pacific Treaty of the 13th of December,
21 1921;

22 Exhibit 27: Identic Communication made to the
23 Portugese Government on the 6th of February, 1922 on be-
24 half of the British Commonwealth of Nations and also
25 'mutatis mutandis' on behalf of the other Powers signa-

1 tory to the Quadruple Pacific Treaty of the 13th of
2 December, 1921;

3 Exhibit 28: The Treaty between the United States
4 of America, the British Commonwealth of Nations, Belgium,
5 China, France, Italy, Japan, the Netherlands and Portugal,
6 concluded and signed at Washington on the 6th of February,
7 1922, known as the Nine-Power Treaty;

8 Exhibit 29: The Treaty between the United States
9 and Japan, signed at Washingt on on the 11th of February,
10 1922.

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1 Exhibit 30: Draft Treaty, Far East Republic,
2 Japan (April, 1922), 17 demands;

3 Exhibit 31: Pekin Convention, 20 May 1925.
4 That should be 20 January 1935;

5 Exhibit 32: The Pact of Paris, 27 August 1928,
6 known as Kellogg-Briand Pact;

7 Exhibit 33: Declaration of Imperial Japanese
8 Government, 27 June 1929, concerning Article 1 of the
9 Kellogg-Briand Pact of 27 August 1928.;

10 Exhibit 34: Washington Naval Limitation Treaty;

11 Exhibit 35: London Naval Limitation Treaty;

12 Exhibit 36: Anti-Comintern Pact, 25 November
13 1936, with secret protocol;

14 Exhibit 37: Cultural Agreement, Japan and
15 Germany, 25 November 1938;

16 Exhibit 38: Japanese Cultural Agreement of
17 23 March 1939;

18 Exhibit 39: Japanese-German Trade Agreement,
19 29 July 1939;

20 Exhibit 40: Basic relations Treaty between
21 Japan and Wang Ching Wei.

22 MR. FURNESS: As counsel for SHIGEMITSU, I
23 would like to inquire as to whether or not that treaty
24 was a treaty between Japan and one individual.

25 MR. JUSTICE MANSFIELD: The treaty between

1 Japan and the independent Wang Ching Wei Regime in China.

2 MR. FURNESS: At that time, that was known as
3 the Nanking Government, is that correct?

4 MR. JUSTICE MANSFIELD: It was known at that
5 time as the National Government of the Republic of China.

6 MR. FURNESS: May the record be amended to show
7 that is the offer by counsel?

8 MR. JUSTICE MANSFIELD: It was the self-styled
9 National Government of the Republic of China and was
10 not recognized as such by other nations except Japan.

11 MR. FURNESS: May the record show that it is
12 not admitted by the defendant SHIGEMITSU and, also, by
13 other counsel?

14 MR. JUSTICE MANSFIELD: Well, the document
15 speaks for itself, if the Tribunal please.

16 THE PRESIDENT: The record will show the state-
17 ments of counsel for the accused who has just spoken.

18 MR. JUSTICE MANSFIELD: (Continuing with the
19 introduction of Exhibits) Exhibit 41: Jap-Thailand
20 non-Agression Pact, 12 June 1940;

21 Exhibit 42: Agreement between Japan and
22 France (Vichy), 22 September 1940;

23 Exhibit 43: Tri-Partite Pact between Germany,
24 Italy and Japan, signed 27 September 1940;

25 Exhibit 44: Peace Treaty Between French

1 Indo-China and Thailand Armistice, 31 January 1941;

2 Exhibit 45: Russo-Japanese Neutrality Pact,
3 13 April 1941;

4 Exhibit 46: Japanese-Vichy Commercial Treaty,
5 6 May 1941;

6 Exhibit 47: Peace Treaty Between French
7 Indo-China and Thailand, 9 May 1941;

8 Exhibit 48: Renewal of Anti-Comintern Pact,
9 25 November 1941;

10 Exhibit 49: Military Convention between
11 Japan, Germany and Italy, 18 January 1942;

12 Exhibit 50: Tri-Partite Economic Agreement,
13 20 January 1943;

14 Exhibit 51: Tri-Partite Military Alliance,
15 11 December 1941;

16 Exhibit 52: Japan-Netherlands Treaty of
17 Arbitration, 19 April 1933, and Japan's Notice of
18 Abrogation thereof;

19 Exhibit 53: United States denunciation of
20 American-Japanese Commercial Treaty, 26 July 1939;

21 Exhibit 54: USSR. Denunciation of Neutrality
22 Pact with Japan, 5 April 1945;

23 Exhibit 55: Resolution of League, 4 March
24 1932, calling for cessation of hostilities and
25

1 arrangements to regulate withdrawal of Japanese
2 Forces;

3 Exhibit 56: Resolution of League, 11 March
4 1932, supporting doctrine of non-recognition of altera-
5 tion in status quo brought about by force and appoint-
6 ing Committee of 19 to report on Sino-Japanese dis-
7 pute;

8 Exhibit 57: Lytton Report;

9 Exhibit 58: Foreign Relations Series, U.S.
10 and Japan, 2 Volumes; Japan's notice of withdrawal
11 from Washington Naval Treaty, 29 December 1934;
12 Japan withdraws from London Naval Conference, 15
13 January 1936; Japan's refusal to accept 14" naval
14 gun limitation, 27 March 1937; Britain, United States
15 and France ask Japan's naval building plans, 5 Feb-
16 ruary 1938; Japan's refusal to reveal naval plans,
17 12 February 1938; Resolution of League, 30 April
18 1932 containing draft armistice; First and Second
19 Reports adopted by the League of Nations Assembly
20 on October 6, 1937;

21 Exhibit 59: Report of League, 24 February
22 1933, declaring Japan aggressor in Manchuria;

23 Exhibit 60: China asks the League of
24 Nations to apply Article 17, 11 September 1938;

25 Exhibit 61: League Council invites Japan

1 arrangements to regulate withdrawal of Japanese
2 Forces;

3 Exhibit 56: Resolution of League, 11 March
4 1932, supporting doctrine of non-recognition of altera-
5 tion in status quo brought about by force and appoint-
6 ing Committee of 19 to report on Sino-Japanese dis-
7 pute;

8 Exhibit 57: Lytton Report;

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11 from Washington Naval Treaty, 29 December 1934;
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13 January 1936; Japan's refusal to accept 14" naval
14 gun limitation, 27 March 1937; Britain, United States
15 and France ask Japan's naval building plans, 5 Feb-
16 ruary 1938; Japan's refusal to reveal naval plans,
17 12 February 1938; Resolution of League, 30 April
18 1932 containing draft armistice; First and Second
19 Reports adopted by the League of Nations Assembly
20 on October 6, 1937;

21 Exhibit 59: Report of League, 24 February
22 1933, declaring Japan aggressor in Manchuria;

23 Exhibit 60: China asks the League of
24 Nations to apply Article 17, 11 September 1938;

25 Exhibit 61: League Council invites Japan

1 to sit with League, 19 September 1938;

2 Exhibit 62: Japan refuses invitation, 22
3 September 1938;

4 Exhibit 63: Brussels Conference;

5 Exhibit 64: USSR. Declaration of War on
6 Japan, 8 August 1945;

7 Exhibit 65: Japan's notification of with-
8 drawal from the Assembly of the League of Nations,
9 27 March 1933;

10 Exhibit 66: Japan's withdrawal from social
11 and technical organs of the League, 2 November 1938;

12 Exhibit 67: U.S. Order freezing Japanese
13 and Chinese Assets, 25 July 1941;

14 Exhibit 68: The Japanese Constitution;

15 Exhibit 69: The Imperial House Law;

16 Exhibit 70: Imperial Ordinance on the
17 Organization of the Cabinet;

18 Exhibit 71: Imperial Ordinance on the
19 Organization of the Board of Planning of the Cabinet;

20 Exhibit 72: Imperial Ordinance on the
21 Organization of the Board of Information of the Cabi-
22 net.

23 MR. FURNESS: As counsel for SHIGEMITSU, I
24 wish to inquire whether these exhibits which are being
25 presented are in the original language. In other words,

1 are they in Japanese, or are they translations of
2 the original ordinances?

3 MR. JUSTICE MANSFIELD: They are in the
4 Japanese language, and they were supplied to the
5 prosecution by the Japanese Government.

6 Exhibit 73: Imperial Ordinance on the
7 General Rules of the Organization of Ministries;

8 Exhibit 74: Imperial Ordinance on the
9 Organization of the Ministry of War;

10 Exhibit 75: Imperial Ordinance on the
11 Organization of the Ministry of the Navy;

12 Exhibit 76: Imperial Ordinance on the
13 Organization of the Ministry of Foreign Affairs;

14 Exhibit 77: Rules of Imperial Military
15 Ordinance;

16 Exhibit 78: Imperial Military Ordinance
17 on the Organization of the General Staff Office of
18 the Army;

19 Exhibit 79: Imperial Military Ordinance
20 on the Organization of the General Staff Office of
21 the Navy;

22 Exhibit 80: Imperial Military Ordinance
23 of the Organization of the Imperial General Head-
24 quarters;

25 Exhibit 81: Law on the Diet;

1 Exhibit 82: Imperial Ordinance on the
2 House of Peers;

3 Exhibit 83: Imperial Ordinance on the
4 Organization of the Privy Council and its Rules of
5 Procedure;

6 Exhibit 84: The National General Mobiliza-
7 tion Law (No. 55 of 1939);

8 Exhibit 85: The Imperial Oath, 1889;

9 Exhibit 86: The Preamble to the Consti-
10 tution;

11 Exhibit 87: The Imperial Ordinance on the
12 Organization of the Ministry of Overseas Affairs;

13 Exhibit 88: Imperial Ordinance on the
14 Organization of the Ministry of Home Affairs;

15 Exhibit 89: Imperial Ordinance on the
16 Organization of the Ministry of Munitions;

17 Exhibit 90: Imperial Ordinance on the
18 on the Organization of the Ministry of Greater
19 East Asia;

20 Exhibit 91: Imperial Ordinance on the
21 Organization of the Ministry of Education;

22 Exhibit 92: Imperial Ordinance on the
23 Organization of the Prisoner of War Management
24 Department, and Imperial Ordinance on the Organiza-
25 tion of the Prisoner of War Information Bureau;

1 Exhibit 93: Imperial Ordinance (1898 or
2 1908) relating to the requirement that the Minister
3 of War and Navy Minister be Senior Officers on the
4 Active List; Imperial Ordinance passed during HIROTA
5 Administration (1936), again requiring the Minister
6 of War and the Navy Minister to be Senior Officers
7 on the Active List; Imperial Ordinance passed in
8 YAMAMOTO Administration, permitting the Minister of
9 War and the Navy Minister to be Senior Officers on
10 the Reserve List;

11 Exhibit 94: Imperial Ordinance on the
12 Organization of the Ministry of the Imperial House-
13 hold;

14 Exhibit 95: Imperial Ordinance on the Or-
15 ganization of the Office of the Lord Keeper of the
16 Privy Seal;

17 Exhibit 96: Imperial Ordinance passed during
18 the War, reorganizing the Cabinet and providing for a
19 Cabinet Advisory Council, a Wartime Economic Council,
20 and Administrative Supervisory Council, a Planning
21 Board, et cetera;

22 Exhibit 97: Imperial Ordinance, November
23 1943, providing for appointment of additional Minister
24 without Portfolio;

25 Exhibit 98: The New Peace Preservation Law,

1 1941;

2 Exhibit 99: Imperial Ordinance under
3 National General Mobilization Law, filed as of 23
4 May 1946.

5 If the Tribunal please, Mr. Horwitz, who
6 prepared the charts and maps, will now proceed to
7 put them in.

8 MR. HORWITZ: If the Court please, at this
9 time the prosecution offers in evidence its exhibit
10 No. 100, a functional series of charts of the Japanese
11 Government Organization as of the 31st of July of the
12 year 1941, together with a report of the changes in
13 the Japanese Government Organization during the
14 period from September 1940 to December '41 to be
15 annexed to the chart.

16 These charts were prepared under the order
17 of the Supreme Commander by the Japanese Government and
18 have been certified by the Central Liaison Office of
19 the Japanese Government as to their accuracy. For
20 the purpose of reproduction, only five of these
21 charts have been reproduced and are being distributed
22 both to the defense and to the Court. In addition,
23 the first chart, showing the general over-all con-
24 struction of the Japanese Government, has been made
25 into a chart to be shown in public. We will now ask

1 that the page lift the first chart.

2 (Whereupon, the charts above referred
3 to were demonstrated as directed.)
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1 MR. FURNESS: As counsel for SNIGENITSU, I
2 would like to inquire whether this was prepared for the
3 purposes of this trial or was it a document in exist-
4 ance prior to the time the prosecution started pre-
5 paring for the trial?

6 MR. MORWITZ: If the Tribunal please, as a
7 matter of fact, I do not believe that it makes any
8 difference for what purpose these charts were prepared.
9 They were prepared by the order of the Supreme Allied
10 Commander for the purpose of information to be had.
11 As a matter of fact, it was prepared for the prose-
12 cution as the first document we asked to have prepared
13 for us when we came here.

14 MR. FURNESS: Then I wish to enter my objec-
15 tion to it until it is further qualified, the basis of
16 my objection being that it is not a document covered
17 by the Court's order which admits as official documents
18 any documents supplied to the prosecution by the
19 Japanese Government. It is my understanding that the
20 Court's order applied only to documents already in
21 existence for which the prosecution, or presumably
22 the defense, made request and not documents prepared
23 for the purposes of the trial.

24 THE PRESIDENT: The counsel's objection is
25 noted.

1 MR. HORWITZ: Might I call to the Court's
2 attention that there is an affidavit, rather a certifi-
3 cate of Mr. KATSUBE, Toshio, of the Central Liaison
4 Office, certifying the correctness of this document.

5 MR. FURNESS: It is my understanding that my
6 objection has been heard and overruled; is that correct,
7 sir?

8 THE PRESIDENT: Noted.

9 MR. FURNESS: Might I then request a ruling
10 on it, sir?

11 THE PRESIDENT: If counsel desires a ruling
12 now, he may have it. The document is received for
13 whatever probative value it may have.

14 MR. HORWITZ: The prosecution now offers in
15 evidence its document, its exhibit No. 101, which is
16 some overlays of maps of the areas showing the
17 territory controlled by Japan and the Japanese armed
18 forces annually on or about 31 December for each year
19 from the year 1931 to the end of the year 1945.

20 These maps were prepared under the supervision
21 of the First and Second Demobilization Offices of the
22 Imperial Japanese Government pursuant to an order of the
23 Supreme Commander. The overlays were furnished by the
24 Demobilization Bureau. The finished maps have been made
25 up by the Nippon Map Company under the supervision of the

1 First and Second Demobilization Ministries, and the
2 maps have been certified as being true and correct by
3 the Military Section of the Central Liaison Office of
4 the Imperial Japanese Government.

5 For purposes of the evidence, we ask that the
6 overlays be made the exhibit and that the maps which
7 appear on the two side panels be treated as reproduct-
8 ions of the material contained on the overlays.

9 MR. FURNESS: May I enter the same objection
10 on the same grounds, even more strenuously, since it
11 seems to me that this is definitely a matter of proof
12 and should not be submitted as evidence at this time.

13 THE PRESIDENT: The ruling will be the same.

14 MR. HORWITZ: The first map shows the situation
15 as it existed on December 31, 1931.

16 DR. KIYOSE: Mr. President, as I wish to
17 study this map and make a few remarks on this, may it
18 be noted that I reserve objections?

19 For instance, the boundary of the Soviet
20 Maritime Province is very wrong. That will have an
21 effect on the Chang-ku-feng Incident -- on the decision
22 regarding the Chang-ku-feng Incident. This is only
23 one example, and I would like to be permitted to study
24 the map as a whole further.

25 THE PRESIDENT: Dr. KIYOSE will have the

1 opportunity to study the maps further. His objections
2 are noted.

3 MR. HORWITZ: The map on the left panel,
4 labeled "1932," shows the situation as it existed as
5 of December 31, 1932.

6 The map on the right panel, marked "1933,"
7 shows the situation as it existed on December 31, 1933.

8 The next map on the left panel, shows the
9 situation as it existed throughout the years 1934 to
10 1936, there being no substantial change during that
11 period.

12 The next map on the right panel, designated
13 "1937," discloses the situation as it existed on
14 December 31, 1937.

15 The next map on the left panel, designated
16 "1938," discloses the situation as it existed on
17 December 31, 1938.

18 The next map on the right panel, discloses the
19 situation as it existed on December 31, 1939.

20 The next map on the left panel, designated
21 "1940," discloses the situation as it existed on
22 December 31, 1940.

23 The next map on the right panel, labeled "1941,"
24 discloses the situation as it existed January 31, 1942.

25 The next map on the left panel, designated

1 "1943," discloses the situation as it existed on
2 December 31, 1943.

3 The next map on the left panel, designated
4 "1944," discloses the situation as it existed on
5 January 31, 1945.

6 The last map on the right panel, designated
7 "1945," discloses the situation at the time of the
8 signing of the Instrument of Surrender on September
9 2, 1945.

10 (Whereupon, prosecution's
11 exhibits Nos. 12 to 101, inclusive, were
12 marked for identification.)

13 MR. JUSTICE MANSFIELD: If the Tribunal
14 please, I offer in evidence all the documents which
15 have been presented to the Court, subject to the con-
16 ditions contained in the order of the Court on June 4
17 last, including the maps and charts.

18 CAPTAIN KLEIMAN: If it please the Tribunal,
19 I call your Honor's attention to Rule 1a (3) of the
20 Rules of Procedure of this Tribunal and request your
21 Honor to ask the prosecution whether they have com-
22 plied with this rule concerning the documents which
23 they have offered in evidence. I ask whether these
24 documents had been lodged with the Indictment; if so,
25 whether those which had been lodged with the Indict-

1 ment had been served on the accused HIRANUMA fourteen
2 days before today.

3 MR. JUSTICE MANSFIELD: Does the Tribunal
4 desire to hear the prosecution on the point raised?

5 THE PRESIDENT: None of these documents
6 have been lodged with the Indictment, I understand.

7 MR. JUSTICE MANSFIELD: That is so.

8 THE PRESIDENT: The Tribunal will now
9 recess for fifteen minutes.

10 (Whereupon, at 1055, a recess
11 was taken until 1115, after which the
12 proceedings were resumed as follows,
13 English to Japanese and Japanese to Eng-
14 lish interpretation being made by MOTONO,
15 Seiichi and IWAMOTO, Masahito, Hidekazu
16 Hayashi acting as Monitor.)
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1 MARSHAL OF THE COURT: The Tribunal is now resumed.

2 MR. HORWITZ: In connection with the offering
3 of the map, I wish to make a correction in the statement
4 with respect to the last map on the right panel for the
5 year 1945. I stated that this map showed the situation
6 as it existed on September 2, 1945 just prior to the
7 outbreak of hostilities between the Soviet Union and
8 Japan.

9 MR. FURNESS: Might I inquire on what basis
10 counsel for the prosecution makes the statement that
11 these maps show the situation as it existed on certain
12 dates? Is that a certificate from the Japanese Govern-
13 ment?

14 (Whereupon Mr. Horwitz showed a paper to Mr.
15 Furness.)

16 MR. HORWITZ: We have a certificate, which
17 has been made part of the exhibit, certifying to the
18 official dates of these maps as to the time they were
19 prepared.

20 MR. FURNESS: As I understand it, that was
21 prepared at the request of the prosecution for the
22 purpose of this trial. If that is not correct, counsel
23 will say so. If it is so correct, might it so appear
24 of record?

25 MR. HORWITZ: These maps were prepared and

1 certified pursuant to an order of the Supreme Commander,
2 the order having been issued at the request of the
3 International Prosecution Section.

4 MAJOR BLAKENEY: May it please the Tribunal,
5 in connection with the formal tender in evidence of
6 documents and maps, I should like to say a word. It
7 is the desire of the defense so far as possible to
8 avoid multiplying objections to documents and questions
9 in connection with these documents. Owing, however, to
10 a misunderstanding of the Court's ruling concerning
11 objections, the defense counsel find themselves at
12 something less than unanimity in their method of pro-
13 cedure. Speaking, therefore, on behalf of all defendants,
14 I should ask leave to state to the Tribunal our under-
15 standing of the effect of the Tribunal's order of the
16 4th of June in regard to objections to documents, and
17 to ask whether such understanding is correct.

18 The language of the order in question is
19 as follows: "Each of the accused shall have the right
20 to object to the admission of any document on the ground
21 that it is immaterial or irrelevant, or on any other
22 substantial ground. The admission of these documents
23 will be in all cases subject to all just exceptions and
24 objections." It is the understanding, I believe, of
25

1 the majority of defense counsel that this language pre-
2 serves to us the right to make objections on grounds of
3 relevancy, materiality, authenticity, or other grounds
4 affecting substantial rights when each such document is
5 not introduced in evidence, as is being done this morning
6 en masse, but is brought into evidence in connection with
7 some phase of the case. Inasmuch as none of us knows at
8 this moment which of these documents affects his defend-
9 ant and how, if our interpretation of the Tribunal's
10 ruling is not correct, our only alternative is to object
11 individually and seriatim to each document as it is
12 produced.

13 MR. JUSTICE MANSFIELD: If the Tribunal
14 please, the understanding of the prosecution is in
15 accordance with the idea of the defense, subject to
16 the substitution of the word "accuracy" for "authenticity."

17 THE PRESIDENT: The majority of the defense
18 counsel have correctly interpreted the order of this
19 Court. The word "accuracy" was used in the judgment
20 which I drafted and not the word "authenticity." That
21 means, in effect, that it will be quite unnecessary for
22 counsel to object from time to time as the document is
23 presented to the Court.

24 BRIGADIER NOLAN: Mr. President --

25 THE PRESIDENT: Brigadier Nolan.

1 BRIGADIER NOLAN: (Continuing) and Members
2 of the International Military Tribunal for the Far East:
3 As the counsel presenting a separate phase of the case,
4 it now becomes my responsibility to make an opening
5 statement, describing the constitutional organization
6 of Japan. What I will have to say is not controversial
7 and is based almost in its entirety upon the laws and
8 ordinances which have already been received in evidence
9 in the case. It is hoped that a picture, imperfect
10 though it may be, of the governmental structure of
11 Japan, will not only expedite the proceedings and be
12 of interest to all counsel engaged in the trial, but
13 at the same time will be of assistance to the Tribunal
14 in coming to a conclusion upon some of the issues which
15 will ultimately present themselves for determination.

16 The officially recognized year of the founding
17 of the Japanese Empire is 660 B.C., and from then until
18 A.D. 645 the government of Japan may be described as
19 tribal.

20 It was, of course, a primitive form of govern-
21 ment and in A.D. 646 the tribal institutions were dis-
22 carded. During the 7th and 8th Centuries, there grew
23 up a central government, with the capital at KYOTO,
24 consisting of a national council of three Imperial
25 Advisers and eight Administrative Departments of State.

1 Governors were designated by the Emperor to rule the
2 provinces and magistrates for the districts were appointed
3 by the Provincial Governors.

4 The Imperial Family was kept in seclusion in
5 KYOTO, and for centuries prior to the MEIJI Restoration
6 in 1867, Shoguns and other military lords ruled Japan.

7 The Tokugawa Shogunate, ruled by fifteen
8 successive Shoguns, lasted from 1603 to 1867. It was an
9 autocratic military government fully centralized and built
10 on a wide basis of feudal functionaries whose duties reach-
11 ed to all parts of the Empire. The Emperor reigned cere-
12 monially without governing as he had done for centuries,
13 and the central agency of government was the Counsel of
14 State.

15 The economic causes for the fall of the Tokugawa
16 Shogunate were many. The gradual and steady expansion
17 of the money economy and the growth of the merchant class
18 had the definite effect of undermining feudalism. More-
19 over, Imperial salaries were largely paid in land and
20 large tax-exempted estates were built up. As a result,
21 the revenues of the central government were reduced to
22 such an extent that the governmental machinery collapsed
23 through malnutrition.

24 The 15th and last Shogun gave up his title
25 without resistance in 1867, the Imperial Government

1 was proclaimed, and the Restoration under the Emperor
2 Meiji began. The government was moved from Kyoto to
3 Edo in 1868 and Edo was renamed Tokyo or East Capital.

4 Feudalism was abolished by Imperial Rescript in
5 1871 and the Reconstruction dates from that year. Im-
6 portant administrative changes soon followed. Many
7 organs of the national government of today were created
8 during that period and some, as will be discussed later,
9 do not operate within the structure of the present
10 Constitution but do so independently of it.

11 After Japan was opened to Western commerce,
12 Western political ideas were taken up by many Japanese
13 and the demand for some form of representative consti-
14 tutional government became so vehement that it was
15 considered advisable to have the Emperor issue an
16 Imperial Decree promising the establishment of a parlia-
17 mentary system.

18 The Imperial Decree of 12 October 1881 con-
19 tained this declaration:

20 "We shall in the 23rd year of Meiji establish
21 a Parliament... with regard to the limitation upon the
22 Imperial prerogative and the Constitution of the Parli-
23 ament, we shall decide and make proclamation in due
24 time."

25 Full understanding of the functioning of

1 Japanese administration demands the recognition of the
2 fact that although the Imperial Constitution (Teikoku
3 Kempo) is the central legal document of the government,
4 it is certainly not all-governing.

5 The government of Japan functions under
6 multi-policy forming bodies which are separate cre-
7 ations from the Imperial Constitution. The construc-
8 tion of government is vertical and laws, ordinances
9 and rescripts come down to the subjects. The main
10 difference between a law and an ordinance lies in the
11 fact that a law can make alterations in any of the
12 existing ordinances whereas no ordinance may alter
13 any of the existing laws.

14 In addition to determined efforts to glean
15 the best from Western nations to operate a central-
16 ized monarchical government, the Japanese early
17 brought into the Empire all scientific knowledge
18 which they felt they could use - communication
19 systems, telegraph, lights, telephones, railroads
20 and steamships - all were required to enable the
21 monarchy to cement its position of regained authority.

22 The work of the Reformists may perhaps be
23 summed up by saying that they created a new monarch-
24 ial government dressed in western forms.

25 The result is a scheme of government in

1 which the basic law or Constitution is essentially
2 Prussian in origin, the structure of the law-making
3 bodies is patterned on those of England, and the
4 system of local government is similar to that of
5 France's Third Republic.

6 Manhood suffrage, ministerial responsibil-
7 ity, a Privy Council, political parties, a bi-camer-
8 al parliament with an aristocratic upper house, the
9 secret ballot, prefects, mayors, national law codes,
10 a constitution, trial by jury, administrative courts -
11 all of these are features of modern Japanese govern-
12 ment, yet none is indigenous to the country.

13 It should be mentioned at that stage that
14 in Japan the Ordinance power goes far beyond the
15 effectuation of statutes and the delegation of
16 functions, to which the Ordinance power is essentially,
17 though not entirely, restricted in countries like
18 Great Britain and the United States. It accomplishes,
19 under the constitution, a variety of purposes which are,
20 in many western countries, left to the Legislature.
21 It follows rather, the model of the continental
22 European type by which the Executive exercises a
23 limited inherent power of legislation at its own
24 discretion.

25 This inherent power of legislation by

1 ordinance in Japan is greater than in any other
2 constitutionally governed state and embraces the
3 power to establish the whole administrative hier-
4 archy, to determine the organization and peace
5 standing of the army and of the navy, to declare
6 war, to make peace and to conclude treaties.

7 Before discussing the Imperial Constitution
8 itself mention is made of the bodies and offices of
9 administrative power which are "unseen", do not
10 function publicly and are outside the Constitution.
11 These agencies may be termed extra-constitutional,
12 and give vitality to the formal structure created
13 by the Constitution because by force of tradition
14 they are competent to advise the throne.

15 The functions and membership of these
16 extra-constitutional agencies, if I may use the term,
17 will be fully explored and explained in the second
18 part of this opening. It is perhaps sufficient at
19 the moment to say that their functions transform
20 an otherwise inert document, such as the Consti-
21 tution, into a highly interesting instrument of
22 administration.

23 These agencies are:

24 Imperial Conferences (the Gozen Kaigi),
25 which function only under the gravest situations.

1 The Elder Statesmen (the Genro), whose
2 advice was given upon the direct request of the
3 Emperor and who disappeared in 1940 with the death of
4 Prince Saionji, the last surviving member.

5 The Senior Statesmen (the JUSHIN), who
6 were late in coming into being and appear to be
7 taking the place of the Cenro in some respects.
8 Their advice is sought in grave emergencies.

9 Then there were the Emperor's Military
10 Boards which consisted, in the first place, of the
11 Board of Marshals and Fleet Admirals, which was
12 established in 1898 and consisted of the Princes
13 of the Royal Blood and the highest army and naval
14 officers.

15 Secondly, the Supreme War Council, which
16 originated in 1887 when the services were being
17 revamped on western lines and was definitely estab-
18 lished by Imperial Ordinance No. 294 in 1903.

19 In addition to those extra constitutional
20 bodies, there are two extra constitutional offices
21 which will be discussed in detail in the second
22 part:

23 Lord Keeper of the Privy Seal, who is
24 appointed directly by the Emperor, and whose duties
25 are set out in Exhibit 95.

1 The Minister of the Imperial Household,
2 who is also appointed directly by the Emperor and
3 is charged with the administration of matters relating
4 to the Imperial Household. He is not a member of
5 the Cabinet, and his duties are set out in the Im-
6 perial Ordinance marked as Exhibit 94 in the case.

7 Before discussing the Imperial Consti-
8 tution itself, I think it will that a word should
9 be mentioned about the conditions under which it was
10 drafted.

11 In 1884, Prince Hirobumi Ito returned from
12 Germany after two years of study and close associ-
13 ation with leading statesmen of the Western world,
14 and particularly Bismarck.. Prince Ito's trip abroad
15 was only the last of a series which had begun ten
16 years earlier and of which Iwakura's mission was the
17 most famous. Upon his return, Prince Ito and his
18 assistants began the work of drafting all the pre-
19 paratory documents leading to constitutional reform.

20 And there was set up a Commission. This
21 Commission was attached to the Imperial Household
22 and not to any other governmental body. In May 1888,
23 the Privy Council took over the final deliberations
24 of this Commission and held its meetings in the
25 Palace with the Emperor present at many of the sessions.

1 British or American democratic ideas and
2 their concept of power coming from the people could
3 not be adapted to the Japanese system or psychology
4 of those years and in consequence Ito took little
5 from England or from the United States. The uni-
6 fication of Germany by Bismarck on the other hand
7 appealed to the Japanese and the Constitution may
8 be said to owe much to German influences.

9 The Japanese Constitution itself, which is
10 Exhibit No. 68 in the case, consisting as it does
11 of seventy-six brief articles is shorter than the
12 Constitutions of many other nations. The language
13 is simple; the language is concise. It was promul-
14 gated by Imperial Rescript on 11 February 1889.

15 The law thus provided is a mere skele-
16 ton and important laws and ordinances which were
17 promulgated with the Constitution in that year 1889.

18 They were:

19 The Law of the Houses;

20 The Imperial Ordinance concerning the
21 House of Peers;

22 The Imperial Ordinance concerning the
23 Election of Members of the House of Peers;

24 The Imperial Ordinance concerning the
25 Cabinet;

1. The Penal Law concerning the infringement
- 2 of Ordinances;
- 3 The Judicial Court Formation Law;
- 4 The Court of Administrative Litigation
- 5 Law; and
- 6 The Board of Audit Law.
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1 Chapter I is devoted to the Emperor. The
2 first articles have reference to the Tenno being
3 sacred and inviolable and that an unbroken line of
4 Emperors will reign over Japan for ages eternal.

5 The position of the Emperor in relation to
6 the Constitution is stated by Prince Ito in his
7 "Commentaries on the Constitution of the Empire of
8 Japan," at page 2, as follows:

9 "The Sacred Throne of Japan is inherited
10 from Imperial Ancestors and it is to be bequeathed
11 to posterity; in it reside the power to reign over
12 and govern the State. That express provisions
13 concerning the sovereign power are especially men-
14 tioned in the Articles of the Constitution in no
15 wise implies that any newly settled opinion thereon
16 is set forth by the Constitution; on the contrary,
17 the original national policy is by no means changed
18 by it but is more strongly confirmed than ever."

19 And again, at page 7, Prince Ito says:

20 "His Imperial Majesty has himself determined
21 the Constitution and has made it a fundamental law,
22 to be observed both by the Sovereign and by the
23 people.

24 "All the different legislative as well as
25 executive powers of State, by means of which he reigns

1 over the country and governs the people, are united
2 in this most Exalted Personage, who thus holds in
3 His hands, as it were, all the ramifying threads of
4 the political life of the country, just as the brain,
5 in the human body, is the primitive source of all
6 mental activity manifested through the four limbs
7 and the different parts of the body."

8 Chapter II of the Constitution is entitled
9 "Rights and Duties of Subjects." Among the rights
10 are freedom of religious belief and of speech, free-
11 dom from arrest and protection of property rights.
12 Among the duties are the liability for service in the
13 Army or in the Navy and the liability for the payment
14 of taxes.

15 Chapter III concerns the Imperial Diet.

16 Chapter IV deals with the Ministers of State
17 and the Privy Council.

18 Chapter V sets forth the organization and
19 jurisdiction of the Judiciary.

20 Chapter VI determines the financial powers
21 of the Diet and other governmental bodies.

22 Chapter VII, and last, contains the
23 supplementary rules which provide for amendments to
24 the Imperial House Law, the Constitution and for the
25 continuation of all laws, ordinances and regulations

1 enacted before the Constitution provided that they
2 were not in conflict, one with the other.

3 Turning my attention for a moment, if I
4 may, to the organization of the Cabinet:

5 The Imperial Rescript on the permanent
6 system of the Cabinet Organization was issued in
7 in September, 1889, and is Exhibit No. 70 in the
8 case. The Cabinet in its initial state was in-
9 stituted in 1885, and the Council of State was
10 then abolished. It is to be observed that except
11 by inference, the Cabinet is not mentioned in the
12 Constitution.

13 Article LV of the Constitution, however,
14 does provide:

15 "The respective ministers of State shall
16 give their advice to the Emperor and be responsible
17 for it. All Laws, Imperial Ordinances and Imperial
18 Rescripts of whatever kind, that relate to the
19 affairs of the State, require the countersignature
20 of a Minister of State."

21 Ministers of State are appointed by the
22 Emperor on the advice of the Prime Minister.

23 Referring to the creation of the Cabinet, Prince
24
25

1 ITO in his Commentaries, at Page 90, said:

2 "By the said **reorganization**, the Ministers of
3 State were made each separately to bear his share of
4 responsibility to the Emperor directly. Over them was
5 placed the Minister President of State. The object of
6 this change was, on the one hand, to give weight to the
7 functions of the Ministers of State and to impress upon
8 them a higher sense of their responsibility and, on the
9 other, to maintain the unity of the Cabinet and to avoid
10 all complications and variances therein."

11 As to its membership the Cabinet is composed
12 of: The Prime Minister who has specific powers and
13 duties of his own and is appointed by the Emperor on
14 the advice of the Lord Keeper of the Privy Seal.

15 Thirteen Ministers of State selected by the
16 Prime Minister and appointed by the Emperor; they were
17 the Ministers of State for War, Navy, Home Affairs,
18 Foreign Affairs, Finance, Agriculture and Forestry,
19 Commerce and Industry, Communications, Railways,
20 Education, Justice, Welfare, and Overseas Affairs.

21 There have been changes made in the number of
22 Ministers which will be referred to later in this opening.
23 And there were such other Ministers without Portfolio, not
24 to exceed four in number, as are provided in Article X of
25 the Cabinet Rescript, being Exhibit 97 in the case. The

1 office of the Minister without Portfolio has been utilized
2 as a means of contact with economic and political groups
3 such as the Imperial Rule Assistance Association and the
4 Imperial Rule Assistance Political Association which
5 groups will be the subject of further discussion.

6 Now, as to the Functions: ITO in his Common-
7 taries set forth the intention of the framers of the
8 new Constitution, and at page 93 it says:

9 "First, that the Ministers of State are charged
10 with the duty of giving advice to the Emperor, which is
11 their proper function, and that they are not held respon-
12 sible on His behalf; secondly, that the Ministers are
13 directly responsible to the Emperor and indirectly so to
14 the people; thirdly, that it is the Sovereign and not the
15 people that can decide as to the responsibility of Minis-
16 ters, because the Sovereign possesses the rights of
17 sovereignty of the State; fourthly, that the respon-
18 sibility for Ministers is a political one and has no
19 relation to criminal or civil responsibility; nor can it
20 conflict therewith; neither can the one affect the other."

21 The Cabinet itself is relatively free from
22 popular controls since its members are primarily
23 responsible to the Emperor and only secondarily to
24 the elective branch of the national legislature, the
25 House of Representatives.

1 Article V of the Cabinet Rescript contains
2 the seven functions of the Cabinet. They are:

3 "I. Drafts of laws, financial estimates and
4 settled accounts.

5 II. Treaties with foreign countries and
6 all national questions of importance.

7 III. Ordinances relating to Administration,
8 or to the carrying out of regulations and laws.

9 IV. Disputes connected with the relative
10 competence of Ministers of Departments.

11 V. Petitions from the people, handed down
12 from the throne or submitted by the Imperial Diet.

13 VI. Expenditures apart from the ordinary
14 estimates.

15 VII. The appointment of Chokunin Officials
16 and Prefects and Governors, as well as their promotions
17 and removals.

18 "In addition to the above," the Article goes
19 on to say, "any important matters connected with the
20 duties of Ministers of Departments, and having relation
21 to the higher branches of the Administration, shall also
22 be submitted for deliberation by the Cabinet."

23 All of these functions are carried out by the
24 Cabinet under the direction of the Prime Minister.

25 The Prime Minister is of Shinnin Rank, and has

1 specific powers and functions.

2 And perhaps it would be appropriate at
3 this time to state the ranks of Japanese officials.
4 They are, first, the Shinnin Rank Officials, those
5 personally appointed by the Emperor; the Chokunin
6 Rank Officials, being those appointed directly by
7 the Emperor on the recommendation of the Prime Minis-
8 ter; the Sonin Rank Officials, those appointed by the
9 Premier with the approval of the Emperor; and the
10 Hannin Rank Officials, those appointed by depart-
11 mental Ministers.

12 And so we see that the Prime Minister is of
13 Shinnin Rank. He gives direct advice to the Throne.
14 He coordinates the work of the ministries. He re-
15 presents the Cabinet in all public affairs. He issues
16 orders for the suspension of any administrative opera-
17 tion or of any order made by a Minister of State. He
18 issues Cabinet Orders. He directs the Metropolitan
19 Police Board of Tokyo, as well as the Prefectural
20 Governors. He appoints Shinto Chief Priests and
21 Sub-Chief Priests who are made sonin in rank.

22 The Prime Minister also has the power to
23 serve concurrently as a Minister of State, and this,
24 as will be seen, has been done a number of times.
25

1 Of the relationship between Prime Minister
2 and Ministers of State, Prince ITO, at Page 94, says:

3 "The Minister President of State is to make
4 representations to the Emperor on matters of State and
5 to indicate, according to His **Pleasure**, the general
6 course of the policy of the State, every branch of
7 the administration being under the control of the
8 said Minister. The compass of his duties is large and
9 his responsibility cannot but be proportionately
10 great."

11 Thus, it will be seen that ITO places the
12 Prime Minister in a position of distinct superiority,
13 responsible for the administration as a whole and
14 empowered to direct it.

15 The Ministers of State in the Cabinet, ex-
16 cept those of the Army and the Navy, are of Shinnin
17 Rank, and as we have seen, are appointed by the
18 Emperor upon recommendation of the Prime Minister.

19 Each of the Ministers of State has three
20 primary duties to perform: First, to bring matters
21 of his Ministry before the Cabinet through the Prime
22 Minister; to delegate his functions to another Minis-
23 ter should it be necessary; and to validate by his sig-
24 nature all laws, ordinances and rescripts which origi-
25 nate in his Ministry.

1 ITO made it clear, however, that the re-
2 sponsibility of the Minister for measures did not
3 lie in the fact that his signature was formally upon
4 the law but from the fact that he was an adviser to
5 the Throne.

6 The Administrative Staff of the Cabinet
7 is divided into a Secretarial and a number of Boards
8 and Bureaus. There are two sections of Boards and
9 Bureaus and a large number of Committees.

10 The Secretariat itself is presided over
11 by the Chief Secretary of the Cabinet.

12 Turning my attention for a moment, if I may,
13 to the Boards: There is first the Board of Planning.
14 This Board, which is headed by a President, is one
15 of the most important units of the Cabinet. It
16 was originally created on 14 May 1937 by Imperial
17 Ordinance. That same Ordinance abolished the Board
18 of Investigation which had similar functions. It
19 was reorganized by Imperial Ordinance 192 of Oct-
20 ober, 1937.

21 The Board is organically a part of the
22 Cabinet as a section for deciding upon matters of
23 national policy.

24 THE PRESIDENT: Brigadier Nolan, it is now
25 twelve o'clock. We will adjourn now until thirty

1 minutes after one.

2 (Whereupon, at 1200, a recess was
3 taken.)
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1 AFTERNOON SESSION

2
3 The Tribunal met, pursuant to recess, at
4 1330.

5 THE MARSHAL OF THE COURT: The Tribunal is
6 now resumed.

7 THE PRESIDENT: Brigadier Nolan.

8 BRIGADIER NOLAN: May it please the Tribunal,
9 when the Tribunal arose for adjournment, I was discuss-
10 ing the functions of the Board of Planning, and I was
11 about to say that the functions of that Board are to
12 be found in Article I of the Ordinance creating the
13 Board, which Article provides that the Board shall
14 make recommendations, acting on the instructions of
15 the Prime Minister, with pertinent observations, both
16 in regard to important national policies and to their
17 coordination and adjustment. The Board's regular
18 function is to advise the Prime Minister so as to
19 avoid conflicts and to adjust all matters amongst the
20 various ministries.

21 Another function of the Board is to invest-
22 igate important policies proposed to the Cabinet by
23 its Ministers and to make appropriate recommendations.
24 The policies proposed by the different departments
25 are referred to the Board which studies them in the

1 light of their importance and investigates them from
2 the point of view of the unity of all national
3 policies. Each Minister knows the requirements of
4 his own department, but the adjustment of those
5 requirements between departments is dealt with by
6 the Board rather than by the Prime Minister alone.

7 A further function of the Board is to
8 investigate important policies and to study the
9 means of coordinating and adjusting them. The latter
10 constitutes "the permanent and regular function" of
11 the Board. On such matters it does not make its
12 decisions public, but always tenders them to the
13 Premier.

14 And lastly, it is the function of the
15 Board to make recommendations concerning control
16 over budget estimates on proposed policies.

17 On any of these matters the Board may call
18 for explanatory data in case such are necessary for
19 carrying out the functions of the Board.

20 The organization includes:

21 A president appointed by the Emperor
22 from amongst the Cabinet Ministers;
23 A vice-president;
24
25

1 Twenty full-time councillors;
2 Fifteen assistant councillors;
3 A regular staff of both junior and
4 senior members, together with permanent
5 advisors from the bureau of the various
6 ministries; and
7 A staff of technical advisers when
8 required;

9 Under Article III of the Ordinance, each
10 Ministry is required to have a liaison officer present.

11 A later change in the organization provided
12 for the appointment of a Director which position was
13 filled by a Minister without Portfolio.

14 There is also a Legislative Bureau. This
15 Bureau drafts all bills and ordinances of the govern-
16 ment which are to be submitted to the Diet. All
17 changes by amendment or repeal of laws and ordinances
18 come to this Bureau, and the President, because of the
19 work carried on, may attend and speak at Cabinet meetings.

20 There is also a Decorations Bureau, which
21 is in charge of awards, of decorations, and pensions.

22 Fourthly, the Manchurian Affairs Board.
23 This Board is concerned with matters arising in
24 connection with Manchuria and the Kwantung Leased
25 Territory.

1 And fifthly, the Board of Information.
2 This, together with the Board of Planning, constitutes
3 two of the most important Boards of the Cabinet. It
4 is the public relations office of the Cabinet.

5 In order to centralize the work of public
6 relations for the Government, a Commission of Inform-
7 ation was created in July, 1936. This was changed to
8 the Cabinet Information Bureau in September, 1937.

9 Under the powers granted by the General
10 Mobilization Law, of which we shall hear more later,
11 information sections of the various governmental
12 offices were combined into one. The Bureau of Inform-
13 ation of the Ministry of Foreign Affairs, the Bureau
14 of Information of the Ministry of War, the Publicity
15 Bureau of the Ministry of the Navy and the Books or
16 Censorship Section of the Bureau of Public Order in
17 the Ministry of Home Affairs, were all centralized into
18 one new Board.

19 The Ordinance in respect to this clause will
20 be found as Exhibit 72 in the case.

21 Its organization includes a president,
22 usually a Minister without Portfolio, a vice-president,
23 and fifty-one secretaries, technical advisers and
24 specialists.

25 Originally, there were five Bureaux whose

1 functions related mainly to such matters as the dis-
2 semination of information at home and abroad, censor-
3 ship, and the control of the publicity and broadcasting.

4 During the war, the Board was further reorgan-
5 ized to control propaganda both at home and abroad.
6 It is divided into three Divisions and collects and
7 disseminates information on national policies, censors
8 all publications in the nation, controls broadcasting,
9 motion pictures and musical and theatrical entertain-
10 ment.

11 Sixthly, the China Affairs Board. This
12 Board was established by Imperial General Ordinance
13 16th of December, 1938, to administer civilian affairs
14 in the occupied areas. The functions of the China
15 Affairs Board of the Ministry of Foreign Affairs and
16 of the Ministry of Overseas Affairs were transferred
17 to this new Board.

18 The direction and administration of all
19 East Asia policies were centered in this Board whose
20 specific duties comprise:

21 One: Political, economic and cultural
22 problems relating to the China Affair;

23 Two: The study and investigation of govern-
24 mental policies to be taken in regard to matters
25 coming under the above category;

1 Three: Supervision of the operations of
2 the companies established under special laws for the
3 purpose of carrying on business in China as well as
4 the control of the business transactions in China
5 by persons who are so engaged; and

6 Fourthly: The maintenance of unity in the
7 administrative affairs of the different government
8 offices relating to China.

9 The important North China Development Company
10 and the Central China Promotion Company are under the
11 control of the Board. Both of these companies adminis-
12 ter large activities in China.

13 The organization of the Bureau is necessarily
14 large, and the President is the Prime Minister ex officio.
15 The Ministers of Finance, Foreign Affairs, War and
16 Navy serve as vice-presidents. The Director-General
17 is the actual administrator. There are fifty officers
18 and sixty clerks to compose the staffs of four bureaux--
19 political, economic, cultural and technical.

20 There are other Boards, whose administra-
21 tion is routine and headed by a Director, among them
22 being the Statistics, Pension, and Printing.

23 Now, turning my attention for a moment, if
24 I may, to the Councils which have been set up, there
25 is, first, the Cabinet Advisory Council. This body

1 was created by the Imperial Ordinance of the 15th of
2 Ocboter, 1937, as a consequence of the outbreak of
3 the China Incident in July of that year.

4 The Ordinance will be found as Exhibit 96
5 in the case.

6 The purpose of the Council was to study
7 and have at hand material on domestic and foreign
8 matters brought about particularly by the Incident
9 and to participate in the deliberations and planning
10 of the cabinet in regard to that Incident.

11 For the first time businessmen and indust-
12 rialists were combined in high office with the military
13 and diplomats. All members were called councillors,
14 and there were twelve in number.

15 There was also a Central Economic Council
16 to which the various ministries submitted their
17 economic items, which were referred to the Council
18 by the Prime Minister.

19 There are, in addition, permanent and temp-
20 orary committees who do special work for the various
21 bureaux that I have mentioned. The names of the
22 committees suggest their functions and are as follows:

- 23 i. The Higher Civil Service Committee.
- 24 ii. The Education Investigation Committee.
- 25 iii. The Central Statistics Committee.

1 iv. The Pension Arbitration Committee.

2 v. The Resources Investigation Committee.

3 vi. The Rice and Cereals Investigation
4 Committee; and

5 vii. Temporary Committees.

6 These Temporary Committees are set up from
7 time to time, as required, and deal with such matters
8 as, for example, the correction of election evils.

9 Now, Mr. President, as to the procedure in
10 the cabinet:

11 The meetings are closed and secret and,
12 while formal records of cabinet meetings are main-
13 tained, they are not published.

14 Voting on questions is rare and differences
15 of opinion are either compromised in the cabinet
16 meeting or final decision is left to the Prime
17 Minister, and only one decision or opinion is made
18 public.

19 As in other countries, Cabinets fall in
20 Japan for a number of reasons. Among them are:
21 Opposition from the military; opposition from the
22 House of Peers or House of Representatives; opposition
23 from the Privy Council; defeat in the elections;
24 public opinion; and the death of the Prime Minister.
25 However, defeat in election and public opinion have

1 not been potent causes in bringing about the fall of
2 a cabinet.

3 There is also what is known in Japanese
4 governmental circles as the Double Cabinet. In this
5 respect the Cabinet of Japan is unusual. The Premier
6 nominates all Ministers except the Minister of War
7 and the Minister of the Navy. These two Ministers
8 are nominated by their respective services. No
9 civilian has ever held the posts. A partial except-
10 ion occurred during the Washington Limitation Con-
11 ference in 1922 and again in the London Naval Con-
12 ference in 1930, when the Premier held the post of
13 Minister of the Navy concurrently with his premier-
14 ship, as was his right so to do.

15 Prince ITO declared in his report to the
16 Emperor in September of 1891 that only military
17 personnel should be appointed Minister of War and
18 Minister of the Navy in order to maintain Imperial
19 prerogatives as well as military prestige and to
20 place the supreme military and naval command beyond
21 parliamentary interference and party politics.

22 The Ministers of War and of the Navy as
23 well as the two Chiefs of Staff may report directly
24 to the Emperor concerning matters within the purview
25 of the Imperial Ordinance, high military and naval

1 officers, respectively. The practice dates from the
2 earliest Cabinet and was embodied in two Imperial
3 Ordinances--No. 193 and No. 194 of 1900 affecting
4 both Ministries, and amended by Imperial Ordinance
5 No. 165 of 1913 for the Ministry of War, and by
6 Imperial Ordinance No. 168 of 1913 for the Ministry
7 of the Navy.

8 The earlier Ordinances required that a
9 Minister of War hold at least the rank of Lieutenant-
10 General, and a Minister of the Navy at least that of
11 Vice-Admiral, in both cases in active service. The
12 amendments of 1913 made it possible for a senior
13 officer on the retired list to be appointed Minister.

14 In 1936, the regulation was again changed by
15 Imperial Ordinances No. 63 and No. 64 of that year
16 to provide that senior officers in both services
17 eligible for such appointments must be in active
18 service.

19 The Ordinances to which I have referred
20 are to be found in Exhibit 93 in the case.

21 As will be seen later, this power of appoint-
22 ment and withdrawal of the Minister of War and of the
23 Navy has enabled the military to prevent, on the one
24 hand, a government being formed, and on the other
25 to bring about its fall after it was formed. It

1 will be shown that the Supreme Command, when acting
2 within its proper sphere, is supreme over the civil
3 power, and that the right of direct access of the
4 military prevents the Cabinet from acting collectively
5 at all times as a parliamentary body when an important
6 segment of its function and administration is carved
7 away.

8 I now turn my attention to the Privy Council.
9 It is obvious that the framers of the Constitution
10 desired the Privy Council to be a permanent institution.
11 They organized the Cabinet to be a governmental body
12 to function with a personnel of changing statesmen.
13 They organized the Privy Council to be a permanent
14 governmental institution. Each is policy forming, and
15 each is advisory. The Privy Council also exercises
16 the legislative function. It is the highest consti-
17 tutional body of the advisers of the Emperor.

18 The Privy Council is composed of a President,
19 a vice-president and twenty-five councillors, all of
20 whom are appointed for life by the Emperor and are of
21 shinnin rank. The practice, however, has grown up
22 that the Premier nominates the candidates after
23 consultation with the President or Vice-President
24 of the Council. Councillors must be over forty years
25 of age. They may resign and often do so despite the

1 high honour of the office. Should a councillor
2 accept a Cabinet office, he must resign from the
3 Council. Councillors are generally members of the
4 House of Peers.

5 The Imperial Ordinance of the 8th of
6 October, 1890, which was issued shortly after the
7 Imperial Constitution was promulgated, set out the
8 functions and powers of this high constitutional
9 body. This ordinance changed and clarified the
10 original ordinance of 30 April 1888.

11 Article VI of the 1890 Ordinance sets out
12 six specific powers of the Privy Council:

13 I. Matters which are under its jurisdiction
14 according to the provisions of the Koshitsu Tempan,
15 or the Imperial House Law. The Imperial Household
16 which deals with such matters as succession and
17 regencies of the Imperial Household has been marked
18 as Exhibit 69 in the case.

19 The second function is described as drafts
20 of laws and doubtful points relating to the provisions
21 of the Constitution and laws and ordinances supplement-
22 ary thereto.

23 III. Proclamation of martial law under
24 Article XIV and the Imperial Ordinances to be issued
25 under Article VIII and LXX of the Constitution, as

1 well as all other Imperial Ordinances having penal
2 provisions.

3 IV. International treaties and agreements.

4 V. -Matters relating to the amendment of
5 the organization of the Privy Council and the rules
6 for the conduct of its business.

7 VI. -Matters specially submitted to its
8 deliberation for advice, in addition to those above
9 mentioned.

10 The Constitution in Article LVI contains
11 specific provision for the Council. It says:

12 "The Privy Councillors shall, in accord-
13 ance with the provisions for the organization of the
14 Privy Council, deliberate upon important matters of
15 State, when they have been consulted by the Emperor."

16 In its relation with the Imperial Household,
17 the Privy Council meets with the Imperial Family
18 Council. The internal affairs of the House are not
19 discussed, but only those which concern the relation
20 of the Family with the State--such as the land and
21 property to be included in Imperial Hereditary
22 Estates, the Regency and succession to the Throne.

23 The relations of the Council to the State
24 are both executive and legislative. It amends many
25 of the drafts of new laws and ordinances before they

1 are submitted to the Diet. When bills are being passed
2 by the Diet the advice of the Council may be asked.
3 In this instance, it does not amend but advises
4 adoption or rejection of the whole issue. The actual
5 power of decision of what is to be submitted to the
6 Council lies with the Cabinet. Moreover, the Cabinet
7 is legally free to secure advice from other offices
8 in cases in which the advice given by the Council is
9 not what is desired. But the political effect of a
10 recommendation of the Council may be a deterrent to
11 the Cabinet to see further advice.

12 The legislative power of the Council lies
13 in the ratification of treaties in foreign relations.
14 The Cabinet negotiates the treaties and the Council
15 advises the Emperor whether to ratify or reject. The
16 powers of the Council are such that it may cause
17 serious embarrassment to the Cabinet and even wreck it.

18 In 1927, the Cabinet of Premier Wakatsuki
19 sought to save the Bank of Taiwan (Formosa) by au-
20 thorizing large advances by the Bank of Japan under
21 government guarantee. The government had obtained
22 legislation supposedly sufficient to protect the
23 banks in the Diet session which had recently closed,
24 but apparently had not gauged the needs of the Bank
25 of Formosa at that time. The Privy Council insisted

1 that an extra session of the Diet should have been
2 convened and refused its approval on the ground that
3 the measure was unconstitutional. This refusal brought
4 about the fall of the Wakatsuki Cabinet.

5 The legislative power of the Council by
6 way of emergency ordinances is used under grave
7 and dangerous conditions of State. Such ordinances
8 may be issued whether the Diet is in session or not.
9 These emergency powers are derived from Articles VIII
10 and LXX of the Constitution itself.

11 "Article VIII provides that The Emperor,
12 in consequence of an urgent necessity to maintain
13 public safety or to avert public calamities, or issues,
14 when the Imperial Diet is not sitting, Imperial
15 Ordinances in the place of law. Such Imperial
16 Ordinances are to be laid before the Imperial Diet
17 at its next session, and when the Diet does not
18 approve of the said ordinances, the Government shall
19 declare them to be invalid for the future.

20 "Article LXX of the Constitution, that when
21 the Imperial Diet cannot be convoked, owing to the
22 external or internal conditions of the country, in
23 case of urgent need for the maintenance of public
24 safety, the Government may take all necessary financial
25 measures by means of an Imperial Ordinance. In the case

1 mention in the preceding clause, the matter shall
2 be submitted to the Imperial Diet at its next
3 session, and its approbation shall be obtained
4 thereto."

5 Meetings of the Council are held in the
6 Imperial Palace in Tokyo at which the Emperor some-
7 times attends as an auditor. Decisions are reached
8 by a majority; but the minority members have their
9 votes recorded with explanations.

10 Non-members who may attend and vote are
11 Princes of Royal blood and Cabinet members. Inform-
12 ation is given to the press in some detail, and some-
13 times even information on the voting appears in the
14 local papers.

15 Records are kept, and opinions on the issue
16 are sent to the Throne as well as to the Prime Ministers.

17 There has been a gradual encroachment by the
18 Privy Council over other bodies and, in particular, the
19 Cabinet. No case exists in which the Cabinet has
20 been overruled by the Privy Council and has then
21 petitioned the Throne for an adoption of the minority
22 opinion. The Emperor would not overrule his highest
23 constitutional body of advisors.

24 The next topic that I ask permission to
25 discuss is that of the Imperial Diet.

1 The Imperial Diet, established by the
2 Constitution of 1889, is composed of two chambers--
3 a House of Peers and a House of Representatives.

4 In defending the adoption of a bicameral
5 system, Prince ITO in his Commentaries says on page 64:

6 "The aim of a representative system is to
7 draw profit from the results of public deliberations.
8 Now, when all the political forces are united in a
9 single House, and are left to the influence of excited
10 passions and abandoned to one-sided movements, with no
11 restraining and equalizing power over them, that House
12 may in the intemperance of biased excitement overstep
13 the limits of propriety, and, as a consequence,
14 bring about the despotism of the majority, which
15 may in turn lead to anarchy. Evils would be far
16 greater under such a state of things than they
17 were in the days when there was no representative
18 system at all."

19 Furuya, another Japanese Constitutional
20 Lawyer, writing in 1899 in his *Système Représentatif*
21 au Japon, on page 95, says:

22 "The system of two chambers is absolutely
23 indispensable in Japan, where the feudal regime ~~was~~
24 abolished scarcely a quarter-century ago."

25 The Imperial Diet possesses no constitutional

1 power in the declaration of war, making of peace,
2 conclusion of treaties, recognition of new states
3 and governments or in the appointment of diplomatic
4 and consular officers.

5 With the gradual development of a parlia-
6 mentary system, however, the Diet has tended to
7 exert an increasing influence, though indirect and
8 often ineffective, over foreign policies as well as
9 over domestic affairs, through legislation, fiscal
10 control and parliamentary debates. Nevertheless,
11 its powers although extensive are not exclusive;
12 they are secondary, not primary; the Diet is comp-
13 etent to apply checks but cannot initiate policy.

14 The law of the Houses of the Diet provides
15 for the relations of the two Houses of the Diet to
16 each other and sets out the procedure to be followed
17 in each House.

18 That law is to be found in Exhibit 81 of the
19 case.

20 The House of Peers was established by
21 Imperial Ordinance, which is marked as Exhibit 82
22 in the case, and sets out in Article I the qualific-
23 ations of membership for this chamber; and they are:

24 Members of the Imperial Family;
25 Princes and Marquises;

1 Counts, Viscounts and Barons who have been
2 elected thereto by the members of their respective
3 orders;

4 Persons who have been especially nominated
5 by the Emperor on account of meritorious service to
6 the State or of erudition; and

7 Persons who have been elected, one member
8 for each city or prefecture, by and from among the
9 taxpayers of the highest amount of direct national
10 taxes on land, industry or trade therein, and who
11 have afterwards been nominated thereto by the Emperor.

12 There are in addition certain age limit
13 qualifications. The House is not divided into
14 political parties but rather into groups which are
15 opinion forming. There are approximately four hundred
16 members.

17 In regard to the powers, it is provided in
18 the Imperial Ordinance which creates it, and which is
19 itself governing law, that it could only be amended
20 by this body itself. That is provided in Article XIII.

21 Secondly, among its powers, it is consulted
22 by the Emperor on privileges of the nobility. (Article
23 VIII).

24 Because of its legislative power, it can
25 interfere in the organization of the House of Represent.

1 atives. Fourthly, it can settle qualifications and
2 election disputes of its own members by reasons of
3 the provisions of Article IX.

4 A committee system is used to carry on the
5 work of the House as stated in Chapter IV of the Law
6 of the Houses of the Diet. There is a Committee of
7 the whole House and various Standing and Special
8 Committees.

9 ITO, in his Commentaries on page 65, says:

10 "If the House of Peers fulfills its functions,
11 it will serve in a remarkable degree to preserve an
12 equilibrium between political powers, to restrain
13 the undue influence of political parties, to check
14 the evil tendencies of irresponsible discussions, to
15 secure the stability of the Constitution, to be an
16 instrument for maintaining harmony between the
17 governing and the governed."

18 The Constitution in Article XXXV provides
19 that the House of Representatives shall be composed
20 of members elected by the people, according to the
21 provisions of the Law of Elections.

22 Article I of the Law of Elections requires
23 the members to be elected from specific electoral
24 districts. Japan was divided into 119 electoral
25 districts and a minimum of three and a maximum of

1 five members are elected from each district for a
2 term of four years. The total number of seats is
3 466. Formerly, any male subject over 25 years of
4 age had the right to vote, and any male subject over
5 30 years was eligible to be a candidate. Recently
6 the age qualifications were lowered, and in the
7 election of April 1946, the franchise was extended
8 to women who also became eligible to be candidates.

9 There are certain restrictions on both
10 franchise and eligibility for candidacy, e.g., bank-
11 ruptcy, the military on active service, and certain
12 government officials. No official can combine his
13 office with membership in the House of Representatives.
14 Cabinet members are one of the exceptions to this
15 rule.

1 In the Commentaries at Page 67 Prince
2 ITO reminds members-to-be of the House of Repre-
3 sentatives that they are:

4 "all of them representatives of the whole
5 country...Representatives, therefor, are to speak
6 freely in the House, according to the dictates of
7 their individual consciences, and are not to regard
8 themselves as the delegates only of the people of
9 their respective districts, commissioned to attend
10 merely to matters entrusted to them by their con-
11 stituents."

12 I should now like to say a word about
13 the powers of the House of Representatives and
14 certain limitations which are imposed thereon.

15 In the first place, the Budget is sub-
16 mitted to the House of Representatives before it
17 is debated in the House of Peers.

18 In 1892 an issue arose between the two
19 houses regarding their respective right in connection
20 with consideration of the Budget. The issue was
21 referred to the Emperor, who referred it to the
22 Privy Council.

23 The decision set the precedent of equality.
24 It reads:
25

1 "With regard to the right of consent to
2 the budget vested in the House of Peers and Re-
3 presentatives respectively, neither house is super-
4 ior or inferior to the other except in one parti-
5 cular, that, according to the 65th Article of the
6 Constitution, the lower house receives the budget
7 from the government before the upper. Therefore,
8 the house which deliberates subsequently is in no
9 respect bound by the decisions of the house which
10 deliberated previously, and it consequently follows
11 that the restoration of any items which may have been
12 excised by the house previously deliberating falls
13 strictly within the right of revision vested in the
14 house subsequently deliberating. The house sub-
15 sequently deliberating has only to employ the method
16 indicated by the law of the houses, namely to seek
17 the concurrence of the house previously deliberating."

18 Which seems to be a rather roundabout way
19 to say that they are both equal.

20 Two: Because the Law of Elections controls
21 the qualifications for candidates, the chamber has
22 no authority on these matters such as is enjoyed
23 by the House of Peers.

24 Three: The legislative power of the House
25 of Representatives is not equal to that of the House

1 of Peers since its group action and "party organi-
2 zations" can be interrupted and broken through dis-
3 solution. In other words, the character of the
4 house is changeable and it has a temporary atmosphere
5 with little solidarity among members as compared to
6 that in the House of Peers. As will be discussed
7 later, all political parties in Japan were dis-
8 solved in the year 1940.

9 May I now just take a moment to compare
10 the powers of the Houses of the Diet.

11 One: The House of Peers is never dis-
12 solved; it is only prorogued. The House of Repre-
13 sentatives is not only prorogued concurrently with
14 the House of Peers at times, but also it is dis-
15 solved. Dissolution may be forced upon the House
16 of Representatives by the government. While this
17 chamber is in dissolution and its members awaiting
18 re-election, the House of Peers is only prorogued.
19 Because many seats may be filled by new members,
20 a change of policy in this chamber often takes
21 place.

22 Two: The political parties of the House
23 of Representatives may be reflected in the Cabinet
24 and the Cabinet actually may be a party cabinet.
25 But because the Cabinet, as soon as appointed, be-

1 comes the government and pro facto responsible
2 primarily to the Emperor and only to the Diet or
3 to the people secondarily, differences of opinion
4 between the Cabinet and the Diet on questions of
5 policy frequently arise.

6 Three: The Cabinet being the government
7 and desiring to test public support in a contro-
8 versial issue, asks for a rescript to dissolve the
9 House, throws the issue to the people in another
10 election and wins. The process is successful for
11 rarely have the opponents been returned in the same
12 number as they were before. Costs and expenses for
13 re-election rather than simple public opinion account
14 for the defeats in many cases on which fact the
15 government relies. None of these burdens are borne
16 by the House of Peers.

17 Four: The House of Peers determines its
18 own rules and activities yet can take part in legis-
19 lative action with the House of Representatives for
20 the organization of the latter body.

21 Five: And lastly, custom gives the House
22 of Peers prestige by having the opening and joint
23 sessions held in the upper chamber with the Presi-
24 dent of the House of Peers presiding.

25 So far as the legislative powers of the

1 Diet as a whole are concerned, there are superim-
2 posed upon it certain constitutional limitations.

3 (i) It cannot convene voluntarily. It
4 is convened at the call of the Emperor.

5 (ii) It cannot initiate Constitutional
6 amendments since this is the sole prerogative of
7 the Throne.

8 (iii) It has no control over the Imperial
9 dynasty.

10 (iv) It is confined in activity and scope
11 by the use of the Ordinance power of the Emperor.

12 (v) Because of the direct access of the
13 military to the Emperor, it is isolated on matters of
14 war although they concern vital matters of Government
15 and Empire.

16 (vi) It has little to do with treaties
17 and major policies in foreign relations. The Con-
18 stitution is very brief in its treatment of foreign
19 relations, confining itself to the statement: "The
20 Emperor declares war, makes peace and concludes
21 treaties."

22 ITO, at Page 28, says:

23 "The principal object of the present
24 article is to state that the Emperor shall dis-
25 pose of all matters relating to foreign intercourse,

1 with the advice of His Ministers but allowing no
2 interference by the Diet therein."

3 (vii) Again, it has no control over
4 additions in territory to the Empire. Taiwan be-
5 came a part of the Empire by treaty after the Sino-
6 Japanese war of 1895 and Karafuto by treaty after
7 the Russo-Japanese war of 1904-5. Chosen was an-
8 nexed by treaty in 1910. None of these territorial
9 acquisitions received legislative approval by the
10 Diet.

11 (viii) The Government also monopolizes
12 the introduction of bills into the Diet. Members
13 have the right to introduce bills and they do but
14 the mortality of such bills is severe. Actually
15 no legislation has been submitted by a private member
16 since political parties were eliminated. It is now
17 customary for the Diet to legalize all measures
18 presented to it by the Cabinet and then to retire.
19 Normally a bill is read three times in the Diet
20 before it becomes law. The procedure in this regard
21 is to be found in Article XXVII of the Law of the
22 Houses of the Diet, which provides:

23 "A project of law shall be voted upon,
24 after it has passed through three readings. But the
25 process of three readings may be omitted, when such

1 a course is demanded by the government and by not
2 less than 10 members, and agreed to by a majority
3 of not less than 2/3 of the members present in the
4 house."

5 The legislative power of the Diet may
6 perhaps be summed up best in the words of ITO at
7 Page 10. He says:

8 "The Legislative Power is ultimately
9 under the control of the Emperor, while the duty
10 of the Diet is to give advice and consent."

11 I now desire to turn my attention for a
12 moment or two to the financial powers but dealing
13 first with the question of the budget. It is pro-
14 vided by the Constitution that "the expenditure and
15 revenue of the state require the consent of the
16 Imperial Diet by means of an annual budget."

17 The entire budget, which takes the form
18 of an appropriation bill, is voted upon by both
19 houses of the Diet, but there are important cate-
20 gories of items which may not be altered by the
21 Diet without the concurrence of the government.

22 This means that the Diet must accept such
23 items unless it can persuade the ministry to modify
24 or delete them. It does not carry the inference
25

1 that the Diet can establish any items of the
2 budget without the concurrence of the government,
3 but rather, that there are some items which the
4 government may not establish without the concurrence
5 of the Diet.

6 The Excepted Items of the Budget are:

7 One: The expenses of the Imperial house-
8 hold, which are paid each year out of the National
9 Treasury.

10 Two: The expenses "based by the Consti-
11 tution upon the powers appertaining to the Emperor"
12 (Article LXVII of the Constitution) among which
13 are -- that is provided under Article 67 of the Con-
14 stitution:

15 (I) Salaries of military and civil officers
16 and pensions of civil officers.

17 (II) Expenses of army, navy, gendarme
18 and colonial militia.

19 (III) Expenses arising from treaties with
20 foreign countries.

21 Under the limitations of this clause the
22 Diet is powerless to withdraw appropriations once
23 agreed to - or which were in effect before the Diet
24 was established for the conduct of a Ministry or any
25

1 division thereof. It is not, however, restrained
2 from effective disapproval of appropriations entail-
3 ed by new ordinances, as, for example, an item for
4 the creation of a new ministry or other agency.

5 The next among the excepted items are:

6 Three: Expenses authorized by Article
7 LXVIII of the Constitution which reads "in order
8 to meet special requirements, the government may
9 ask the consent of the Imperial Diet to a certain
10 amount as a continuing expenditure fund for a pre-
11 viously fixed number of years." Once these funds
12 are voted, no changes are made. The total is
13 divided and allocated to each year and hence is
14 part of that year's budget regardless of whether the
15 Diet is not in session through having been dissolved
16 or whether the budget is passed. Examples of special
17 accounts which may be cited are:

18 (I) The Sino-Japanese war of 1894-95 when
19 the fund continued over sixteen months.

20 (II) The Russo-Japanese War of 1904-5
21 when the fund continued over three years.

22 (III) The World War I when the fund con-
23 tinued for eleven years.

24 The fourth class of excepted expenses are
25 those which may have arisen "by the effect of law,"

1 that is to say, expenses of the houses of the Diet,
2 annual allowances to the members, pensions, annui-
3 ties, expenses and salaries required by the organi-
4 zation of offices determined by law and other expenses
5 of a like nature.

6 Items in this category may be altered only
7 by the modification of the statutes authorizing them.
8 In such cases the Diet will have had an opportunity
9 to debate the principles involved in the authorizing
10 act, but it is not free to repudiate its decision
11 by refusing the necessary items in the budget.

12 The next class of excepted expenses are
13 those which pertain "to the legal obligations of
14 the government." These include the interest on the
15 national debt, redemption of the same, subsidies or
16 guarantees to companies, expenses necessitated by the
17 civil obligations of the government and compensa-
18 tion of all kinds. Funds to maintain temples, to
19 provide agreed sums to subsidize navigation companies,
20 railways and schools and to pay damage, interest
21 and rentals fall within this class.

22 Uchiiki and Sakamoto in their article,
23 "The Budget System of Japan" at Page 23 have this
24 to say:
25

1 "The total amount of the above funds
2 (what are called here the excepted categories) is
3 usually about two-thirds of the total expenditures
4 of the budget, and if we add to this the continuing
5 appropriations, a very small amount is left for con-
6 sideration in the Diet. It is only in case these
7 permanent expenses are to be increased that the
8 consent of the Diet is necessary. Thus the scope
9 of the vote in the Imperial Diet is very limited;
10 but nevertheless there are sharp debates on the bill.

11 The Constitution itself in Article 64
12 provides that:

13 "any and all expenditures overpassing the
14 appropriations set forth in the titles and para-
15 graphs of the budget, or that are not provided for
16 in the budget shall subsequently require the appro-
17 bation of the Imperial Diet."

18 This Article is supplemented by another
19 (Article 69) under which:

20 "in order to supply deficiencies which
21 are unavoidable in the budget and to meet requirements
22 unprovided for in the same, a reserve fund shall be
23 provided in the budget."

24 Thus it will be seen that the Diet endows
25

1 the government with blanket power to employ the
2 reserve fund in its discretion, but it is entitled
3 to a report upon such expenditures at a subsequent
4 session. At that time it may refuse to approve them;
5 however such refusal will not invalidate the acts
6 of the government nor the obligations which it is
7 under as a result of its act. The Diet may fail,
8 -- frequently it has failed -- to vote the budget.
9 In that event the device of Bismarck, authorized
10 by the Constitution in Article 71 is called into
11 play, and the government, theoretically carries out
12 the budget of the preceding year -- theoretically
13 only, however, since it employs deficiency appro-
14 priations to a continually increasing extent to in-
15 crease the old budget. It may not, however, apply
16 an appropriation for any object other than that
17 prescribed in the budget; nor are the Ministers of
18 State permitted to interchange the amounts of the
19 appropriation in each section, one for the other
20 (Law of Finance Article 12).

21 It is apparent that when the budget, due
22 to dissolutions, is that originally prepared for
23 the preceding year, there will be need for many
24 deficiency appropriations.
25

1 Governments formerly dreaded a dissolution
2 before the budget was passed, but because deficiency
3 appropriations, which are supposed to be used only
4 in emergencies, have become a usual mode of pro-
5 cedure, governments are not now dismayed at the pro-
6 spect of its budget being thrown out. Once an ex-
7 penditure is made, the opposition is likely to be
8 half-hearted, and in this way the control of the
9 Diet is still further diminished.

10 So much for the budget.

11 May I now turn to the tax power of the
12 Diet as derived from Articles LXII, LXIII and LXIV
13 of the Constitution.

14 Special tax laws are submitted to the
15 Diet. They are separate from the budget or appro-
16 priation bills. While new taxes require the sanction
17 of the Diet, such tax laws are not part of the budget;
18 the government is not dependent upon annual debate
19 or discussion for renewals and its revenues go on
20 being regularly collected.

21 Floating of Loans is provided for in
22 Article LXII of the Constitution which provided that
23 the consent of the Diet to such loans is required.

24 (iv) Emergency Ordinances.
25

1 The First and Second Reserve Funds esta-
2 blished by Article 7 of the Law of Finance and pro-
3 vided for by Article LXIX of the Constitution may
4 not be sufficient to finance unexpected catastrophes
5 or the emergencies of war. Moreover, neither time
6 nor public safety may exist for an extraordinary
7 session of the Diet. When these two grave situations
8 occur, the government is authorized under Article
9 LXX of the Constitution to take "...all necessary
10 financial measures by means of an Imperial Ordinance."

11 Now funds received in this manner have to
12 be sanctioned at the next regular session of the
13 Diet, and the Ordinance must be withdrawn if dis-
14 approved by the Diet. But non-approval does not
15 affect the past operation of the ordinance.

16 The power of the Privy Council in regard
17 to such emergency ordinances is important, as that
18 body must be consulted whenever such ordinances are
19 to be issued. It may be said that the Privy Council
20 has consistently opposed the practice of issuing
21 emergency ordinances which would have further re-
22 stricted the already limited financial powers of the
23 Diet.

24 I mentioned earlier the Board of Audit.
25

1 This Board is a separate administrative body created
2 under Article LXII of the Constitution which pro-
3 vides that:

4 "The final account of the expenditures and
5 revenues of the State shall be verified and confirmed
6 by the Board of Audit....."

7 The President of the Board is appointed
8 directly by the Emperor after advice and deliberations
9 with the Prime Minister. He is not a Cabinet Minis-
10 ter, but is on an equal footing with a Minister of
11 State.

12 The above-mentioned Article further pro-
13 vides that the final account "shall be submitted by
14 the government to the Imperial Diet, together with
15 the report of verification of said Board."

16 The Diet is enabled in this way to
17 check the account against the budget and to
18 demand explanation of variances between them.
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1 This approval is not attended with legal
2 consequences but the Diet may vote lack of confidence
3 or submit an address of criticism to the Emperor.

4 I now come to a discussion of the Min-
5 istries of State.

6 These Ministries have been established
7 by both laws and ordinances. The basic legal form
8 of the Ministries was determined at the time of the
9 promulgation of the Constitution in 1889. Amendments
10 through ordinances and laws have altered, added or
11 abolished Ministries and their bureaux, sections
12 and personnel.

13 The law providing for the Ministries of
14 State is Exhibit 73 in the case.

15 So far as the general structure of Min-
16 istries is concerned, it may be said that the Con-
17 stitutional powers of the Ministers of State are
18 derived from the Preamble to the Constitution and
19 from Articles LV and LIV.

20 The Preamble to the Constitution charges
21 that "Our Ministers of State on our behalf, shall
22 be held responsible for the carrying out of the
23 present Constitution..."

24 Article LV of the Constitution itself
25 provides "they shall give their advice to the

1 Emperor and be responsible for it." By the same
2 Article the signature of the Minister is required
3 on "All laws, Imperial Ordinances and Imperial Re-
4 scripts of whatever kind, that relate to the affairs
5 of the State..."

6 Article LIV is permissive in that Ministers
7 and their delegates "may, at any time, take seats
8 and speak in either House."

9 Concerning the Ministers of State, Prince
10 ITO wrote on Page 94 of his Commentaries: "They
11 are severally held responsible for the matters with-
12 in their respective competency..... there is no
13 joint responsibility among them in regard to such
14 matters."

15 He then pointed out that each Minister
16 was "controlled by the will of the Emperor" and
17 that the danger in creating a Cabinet with joint
18 responsibility was the growth of "party combination"
19 which, it was feared "would ultimately overrule the
20 supreme poser of the Sovereign." Yet he recognized
21 that there were important matters of concern to
22 all the Ministers, that regarding them the Premier
23 would naturally consult with the Ministers and
24 that "in such matters it would of course be proper
25 for the Cabinet to assume joint responsibility."

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1 They issue ordinances for the carrying out
2 of their functions and duties. They issue directions
3 to the Kenchiji or Governors in their respective
4 branches of government. They supervise all public
5 relations and in person represent the Ministry and
6 staff in public gatherings. They, with their vice
7 ministers, control the tenure of the senin rank
8 officials. They appoint and remove all hennin rank
9 and lower rank officials. They have the dual func-
10 tion in the Cabinet of being not only Cabinet states-
11 men to formulate and carry out a national policy but
12 also of being lobbyists for their own ministries.

13 Ministers, as we have seen, are appointed
14 by the Emperor upon the recommendation of the Prime
15 Minister.

16 Party affiliations may or may not be borne
17 out in the selection of the Ministers. A political
18 party may have a majority in the Diet but the colour
19 of the Cabinet may be quite different. Victory of a
20 party at the polls does not mean control of the
21 affairs of State or dominance in the Cabinet. These
22 two possible situations are sharp limitations upon
23 the power of the democratic ballot.

24 For most Ministers, tenure in office is only
25 for the term of one Cabinet. However, some have been

1 continued in office consecutively for two or three
2 Cabinets and some have been recalled after having gone
3 out of office.

4 Concurrent office holding has been frequent
5 in recent years. The permanent Vice Minister does
6 not step up to fill a temporary vacancy as is the
7 practice in some countries.

8 This Permanent Vice Minister, known as the
9 Jikan, has his powers usually defined in the ordin-
10 ances as the executive assistant to the Minister whose
11 duties are to regulate the business of the Ministry
12 and to supervise the operations of the bureaux.

13 The Vice Minister is appointed indirectly
14 by the Emperor through the Minister and while his
15 tenure of office was contemplated as being of long
16 duration so that continuity in ministerial policy
17 could be maintained regardless of change in the
18 office of Minister, actually in some ministries the
19 Vice Minister has gone out of office almost as fre-
20 quently as the Cabinet Ministers, for the simple
21 reason that the Vice Minister has found it diffi-
22 cult to work with the New Minister.

23 There is also a Parliamentary Vice Minister
24 known as the Seimujikan. This officer frequently
25 appears before the committees of both chambers to make
explanations and to present information furnished by

1 his Ministry. More frequently than not he is a
2 member of the Diet and as such maintains a dual
3 position.

4 This appointment to office is made by the
5 Prime Minister on the nomination of the Minister.

6 There is also a Parliamentary Councillor.
7 The functions and duties of this officer are similar
8 to those of the Parliamentary Vice Minister as is
9 his tenure of office.

10 Then there is the Secretariat, which is
11 the administrative staff for the entire Ministry, and
12 the Bureaux. They are the main administrative units
13 of the Ministries.

14 The Committees. Committees are appointed
15 for permanent and temporary purposes. They may be
16 executive, advisory or investigative. And the Boards
17 which are definite supplementary agencies for admin-
18 istration purposes.

19 As I said before, until recently there were
20 thirteen Executive Ministers of State.

21 The Ministry of the Imperial Household is
22 actually an additional Ministry but because it was
23 separated legally in 1884 from the executive Min-
24 istries of State with specially created functions
25 to serve only the throne, it is not a part of the

1 executive machinery of State.

2 In 1942 a new Ministry of Greater East
3 Asia, which shall be mentioned later, was established.
4 In substance this new organization removed all
5 matters which dealt with the Greater East Asia
6 Co-Prosperity Sphere from the Foreign Office.

7 In 1943 the Ministry of Overseas Affairs
8 was eliminated and its functions, together with
9 the amalgamation of four other Ministries, resulted
10 in the creation of three new ones. The Ministry of
11 Commerce and Industry, the Ministry of Communications,
12 the Ministry of Railways and the Ministry of Agri-
13 culture and Forestry gave way to the creation of a
14 Munitions Ministry, a Transportation and Communica-
15 tions Ministry and a Ministry of Agriculture and
16 Commerce. Something more will be said about these
17 new ministries when we come to consider wartime
18 changes.

19 Taking the ministries in order, may I
20 begin with the Ministry of War. As has been said
21 earlier Prince Ito declared in his report to the
22 Emperor in September 1891 that only military personnel
23 should be appointed Minister of War and Minister of
24 the Navy in order to maintain Imperial prerogatives
25 as well as military prestige and to place the supreme

1 military and naval command beyond parliamentary
2 interference and party politics. Mention has also
3 been made of the various ordinances requiring the
4 Minister of War and of the Navy to be senior officers
5 on the active list.

6 Speaking now of the specific duties of
7 this ministry, because many important policies of the
8 Army are not determined in the Ministry but go to
9 the Emperor directly the Minister does not carry on
10 the type of policy conference which exists in other
11 Ministries. The Ministry may be described as the
12 administrative machinery of the Army.

13 Almost all of the Ministers of War have
14 been outstanding figures in the Imperial Army.
15 They have been graduates of the Military Academy
16 and have been military attaches, divisional commanders,
17 chiefs of staff of armies and members of the Supreme
18 Military Council.

19 The Ministry has eight bureaux to carry
20 on its administration. Normally each is headed by
21 a Lieutenant General or Colonel.

22 The first of these bureaux is the Personnel
23 Bureau, which is divided into two sections. The
24 first is the Appointment Section, which deals with
25 appointment, promotion, assignment, retirement,

1 wartime duties of personnel in the Ministry --
2 military and civilian -- and personal records. And
3 the second section is the Pension and Decorations
4 Section, which has the name Onsho Ka, and which deals
5 with pensions, decorations, furloughs, and marriages.

6 The second bureau of this Ministry is the
7 Military Affairs Bureau or Cummu Kyoku, and much will
8 be heard of this particular bureau as this case
9 unfolds before the Tribunal. Sufficient for my
10 purpose at this time to say that this Military
11 Administration Section deals with the fundamental
12 principles of national defense, matters concerning
13 the armament of the Army and other general adminis-
14 tration of the Army, the establishment, peacetime
15 organization and equipment of the Army, the principles
16 of guarding against danger, defence, mobilization of
17 the army and manpower, the general control of the
18 military estimates, fundamental munition adminis-
19 tration, the control of the duties of the air service
20 and other matters connected with aviation, manoeuvres
21 and inspection, allotment of units and corps, various
22 regulations in wartime, and resident-officers in
23 foreign countries, officers studying abroad, and the
24 ruling of the Army Research Committee.

25 The second section of this bureau is

1 known as the Military Affairs Section. It deals with
2 matters concerning general affairs of the national
3 defense policy, international regulations, foreign
4 officers attached to army units, general affairs
5 of national demobilization, army affairs of
6 Manchuria and China and orders concerned with them,
7 army affairs of foreign countries except Manchuria
8 and China, matters concerning connection affairs
9 with Imperial Diet, matters concerning popular-
10 ization of national defense spirit and counter-
11 plan for nation's thoughts, and matters concerning
12 control and direction of parties doing research
13 work for military affairs.

1 There is a third bureau known as the Military
2 Service Bureau or the Heimu Kyoku, which is also
3 divided into several sections, the first of which is the
4 Military Service Section, or the Heimu Ka. The ordinance
5 which sets it up provides that the duties of this
6 section shall concern itself with the various armies
7 and branches of the service exclusive of the gendarmerie
8 and the air force, with training and duties of members
9 of military bands, training manuals, discipline and
10 punishment, internal duties, military ceremonies, et-
11 quette, insignias, parade grounds, rifle ranges, and
12 the military training of students and youth.

13 The second, the War Preparations Section,
14 as it existed before the war, had for its duties
15 matters relating to military service, recruitment and
16 replacement of officers and men, military mobilization,
17 muster, mobilization in general, requisitions, matters
18 pertaining to ex-servicemen.

19 The Defense Section deals with such matters
20 as Military Police, spy protection, air defense,
21 guarding and safety precautions, garrison duty, con-
22 struction and complement of fortifications and lands used
23 for national defense. And it is also concerned with
24 those laws which are applied to fortified zones,
25 military management laws applied to army transport

1 areas, and with domain and city planning.

2 The other bureaus, namely, the Military
3 Preparations Bureau, Ordnance Bureau, Bureau of In-
4 tendence, and Medical Bureau, are what their names
5 would indicate them to be.

6 There was, in addition, a Legal Bureau and
7 an Army Press Section.

8 The Army Press Section was the public rela-
9 tions office for the Ministry and the Army. So im-
10 portant to the Army was its propaganda and official
11 releases that a Major General has been in command of
12 the section. Since the formation of the Bureau of In-
13 formation under the Cabinet, important announcements
14 and information have not been given out through the
15 Army Press Section.

16 To complete the Army organization, atten-
17 tion is drawn to the following offices and institu-
18 tions which are not a part of the Ministry of War, nor
19 under its supervision.

20 As has been stated under the powers of
21 the Emperor, all matters of organization, mobilization
22 and operation are his personal commands and are not a
23 part of the Ministry of War.

24 The Army by taking the initiative on the
25 battlefield can present the Foreign Office with a fait

1 accompli. This leaves its diplomats no alternative
2 other than to accept the existing situation. As has
3 been said the Army acts and the Foreign Office ex-
4 plains.

5 ITO says of this power, at page 29,

6 "The exercise of the right of warfare in
7 the field --- as the exigency of circumstances may
8 require, may be entrusted to the commanding officer
9 of the place, who is allowed to take actual steps his
10 discretion dictates, and then to report to the govern-
11 ment. This is to be regarded as a delegation of
12 sovereign power of the Emperor to a general in com-
13 mand of an army in order to meet the stress of
14 emergencies ---"

15 Nakane in his publication entitled "Ordin-
16 ance Power of the Emperor" wrote, at page 155:

17 "Though the declaration of war and con-
18 clusion of peace are placed under Cabinet control,
19 the general staffs having the supreme command of the
20 armed forces, could force the declaration of war and
21 the conclusion of peace by sending an aggressive
22 expedition against a foreign power or withdrawing
23 troops from the field."

24 THE PRESIDENT: You may be a bit tired,
25 Mr. Brigadier. If so, you will appreciate the mid-

1 afternoon recess. We will recess now for fifteen
2 minutes.

3 (Whereupon, at 1445, a recess was
4 taken until 1500, after which the proceed-
5 ings were resumed as follows:)

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MARSHAL OF THE COURT: The Tribunal is now resumed.

THE PRESIDENT: Brigadier Nolan.

BRIGADIER NOLAN: May it please the Tribunal, when the Tribunal adjourned I was about to make some mention of the organization of the General Staff, which is known as the Sambo Hombo. The Ordinance which provides for its organization will be found in Exhibit 78 in the case.

10 The Chief of the General Staff is concerned
11 with the broad phases of military strategy, planning
12 and mobilization. The Regulations of the General
13 Staff Office provide that a general or lieutenant-
14 general be appointed by the Emperor to the post of
15 Chief of the General Staff, and is placed under the
16 direct command of the Emperor, attends the War
17 Council, takes charge of the formation of plans
18 for national defense and strategy and supervises the
19 General Staff Office. He is assisted in his duties
20 by a Vice Chief of the General Staff and Staff
21 Members.

22 Attached to and under the jurisdiction
23 of the General Staff are the following institutions:

24 The General Staff College, which is some-
25 times called the Army War College; and

1 The Army Land Survey Department.

2 The Chief of the General Staff, as has been
3 seen, is appointed by the Emperor.

4 There are many Bureaus, the first being the
5 General Affairs Bureau which is concerned with Person-
6 nel Affairs, Organization and Mobilization Section;
7 Secondly, Operations Bureau, which is concerned with
8 Operations and War Plans Section, Fortresses Section,
9 and Maneuvers Section; thirdly, Intelligence Bureau,
10 American and European Section, Asiatic Section, Secret
11 Service Section; fourth, Transport and Communications
12 Bureau, which is concerned with matters of Communi-
13 cations (wireless and wire) Section, Transport, both
14 by land and sea; and fifth, the Historical Bureau,
15 which is concerned with wars in which Japan took part
16 and wars in which Japan did not take part.

17 Then there is another important post in the
18 Army hierarchy known as the Inspector General of
19 Military Training.

20 Now, the office of the Inspector General of
21 Military Training is responsible for all technical
22 and tactical training of the separate arms. Briefly,
23 one might say that the Minister of War administers,
24 the Inspector General trains, and the Chief of the
25 General Staff employs the Army both in maneuvers and

1 in battle. To the Inspector General of Military
2 Training chiefly falls the important task of build-
3 ing the national esprit de corps known in the Japanese
4 Army as "spiritual mobilization."

5 Military schools are under the jurisdiction
6 of the Inspector General's office, together with a
7 number of inspectorates such as the artillery, engineer-
8 ing, transport, cavalry, chemical warfare and commun-
9 ications.

10 Then, there is another Inspector General,
11 the Inspector General of Military Aviation.

12 The Inspector General of Military Aviation
13 is directly responsible to the Emperor for matters
14 pertaining to air training, while in other respects
15 he is subordinate to the Big Three -- the expression
16 is not my own; it is a Japanese expression -- the
17 Big Three being the Chief of General Staff, the
18 Minister of War, and the Inspector General of Military
19 Training.

20 The Inspector General of Aviation is respon-
21 sible to the War Minister in matters pertaining to
22 personnel and military administration, and is respon-
23 sible for operations to the Chief of the General
24 Staff.

25 Then there is an Army Aviation Headquarters,

1 which is a subordinate agency under the Ministry of
2 War, and its principle functions appear to be largely
3 procurement and supply.

4 Then there is the organization of the Japan-
5 ese Military Police, the Kempei. The Military Police
6 form a branch of the Army under the Provost Marshal
7 General, who is responsible to the Minister of War.
8 They, too, are divided in their organization into
9 sections: The General Affairs Section, concerned with
10 policy, personnel, discipline, records, and the con-
11 trol of thought in the Armed Forces; the Service
12 Section, which has three main functions, the supply,
13 organization and training of police units, the se-
14 curity, and the counter-espionage.

15 So far as their duties are concerned, the
16 military police take orders from different authori-
17 ties according to the areas in which they are stationed.

18 In Japan, during peacetime, the police are
19 responsible to the Minister of War for their normal
20 military duties, to the Minister of Home Affairs
21 insofar as they assist the civil police and to the
22 Minister of Justice for duties connected with the
23 administration of the law.

24 In Manchuria, Korea and Formosa, although
25 they were primarily responsible to the Commanders

1 in Chief, they might also be called upon to assist
2 the local civilian authorities.

3 In all areas their broad duties are:

4 The surveillance of military discipline,
5 the enforcement of security,
6 the execution of conscription laws, and
7 the detection of crime amongst soldiers.

8 In combat areas they are, in addition to
9 their ordinary duties, concerned with such matters
10 as

11 the detection and arrest of fifth column-
12 ists and
13 the suppression of subversive activities.

1 In the Pacific area they were responsible
2 for pacifying hostile natives, for settling dis-
3 putes between natives and Japanese soldiers, for
4 requisitioning native foods and supplies, for the
5 recruitment of native labor, and for the organi-
6 zation of native spies operating behind allied lines.

7 In New Guinea, according to reports, the
8 military police were given charge of a native force
9 both for reconnaissance and in order to harass the
10 enemy.

11 Then, in the Army hierarchy are the
12 Supreme Command Organs. We have already mentioned
13 the Board of Field Marshals and Fleet Admirals. We
14 have already mentioned the Supreme War Council. But
15 there is, in addition, the Wartime Imperial Head-
16 quarters.

17 The present Imperial Headquarters was
18 formed in 1937 when it became apparent that the
19 China Incident was developing into a war of major
20 proportions. Its purpose is to assume supreme mili-
21 tary command with the general staff as its nucleus.
22 In other words, it places the Supreme Command on a
23 a war-time basis. Its membership is essentially
24 the same as the Supreme War Council, with the
25 exception of the Board of Fleet Admirals and Field

1 Marshals, who are not members. The Emperor, as Sup-
2 reme Commander-in-Chief, is the head of the Imperial
3 Headquarters.

4 And perhaps it would be appropriate, in
5 dealing with Army matters, to say a word about the
6 administration of prisoners of war.

7 By Imperial Ordinance, exhibit 92 in the
8 case, No. 1182, of 23 December 1941, prisoner of war
9 camps were placed under the jurisdiction of the
10 Minister of War. The Ordinance provided that they
11 were to be administered by a Commander of an Army
12 or a Commander of a Garrison under the general super-
13 vision of the Minister of War.

14 The Prisoner of War Information Bureau was
15 organized by Imperial Ordinance No. 1246 of 27 Dec-
16 ember 1941 and placed under the control of the
17 Minister of War. Article I of the Ordinance provided
18 that the Bureau shall be charged with the responsi-
19 bility of the following matters:

20 One: The investigation of internments,
21 removals, releases on parole, exchanges, escapes,
22 admissions into hospitals, deaths of prisoners of
23 war and the maintenance of records for each prisoner.

24 Two: The communications, correspondence,
25 and information regarding the conditions of the

1 prisoners of war.

2 Three: The custody and the transmission
3 to families and other persons interested of objects,
4 articles and wills of the prisoners of war who are
5 released on parole, exchanged, or those who died at
6 hospitals, medical dressing stations, or prisoner of
7 war camps.

8 Four: The forwarding of gifts to prison-
9 ers of war and of money, objects, and articles sent
10 by or to the prisoners of war.

11 Five: Information obtained by the army or
12 the navy from those killed or slain in battle, the
13 handling of their objects, and wills and of objects
14 found in the field of battle.

15 Six: Investigations concerning persons
16 who are prisoners of war in enemy countries and the
17 facilitation of communications between those prison-
18 ers of war and their families residing in the empire.

19 The Regulations for the Treatment of
20 Prisoners of War (being the War Ministry Notifica-
21 tion Asia, Confidential No. 1034, dated the 31st of
22 March, 1942) provided by Article II that a Prisoner
23 of War Administration Division be established in the
24 Ministry of War for the conduct of all affairs rela-
25 tive to the treatment of prisoners of war, and of

1 civilian internees in the theater of war.

2 Provision was also made in the Regulations
3 for the appointment of a Division Head with the rank
4 of Lieutenant General or Major General, and staff
5 members with the rank of Field or Company grade
6 officers. Article IV provided that the Division
7 Head shall administer the affairs of the division
8 under the orders of the Minister of War and the staff
9 members shall carry out their duties under the orders
10 of the Division Head.

11 The new division dealt with such matters as
12 the supervision, exchange, liberation, punishment,
13 utilization and treatment of prisoners of war.

14 Now, Mr. President, in regard to complaints
15 regarding prisoners of war, for about a year after
16 the outbreak of the war, complaints from the Protect-
17 ing Power relating to the treatment of prisoners of
18 war held by the Japanese were received by the Treaty
19 Bureau of the Ministry of Foreign Affairs and for-
20 warding to the Prisoner of War Information Bureau in
21 the War Ministry.

22 The replies, if any, to the Protecting
23 Power were based on the replies received from the
24 War Ministry.

25 Subsequently, the Service Bureau of the

1 Ministry of Foreign Affairs was established and the
2 prisoners of war matters formerly dealt with in the
3 Treaty Bureaus were transferred to the new Service
4 Bureau.

5 Turning our attention, now, if I may, to
6 the Ministry of the Navy, this Ministry was created
7 in 1872, when the Ministry of War was separated into
8 two Ministries. It was established more formally
9 in 1885 and 1889 and with some later amendments
10 remains in that structure. Its organization may be
11 seen in the Imperial Ordinance marked as exhibit 75
12 in the case. The Navy itself follows the British
13 pattern of organization.

14 As to the specific duties of the Minister
15 of the Navy, it is fair to say the important ques-
16 tions of policy are decided by the Chief of Staff
17 directly with the Throne. Details of administration
18 are the major concern of the Ministry.

19 The Ministers of the Navy have been dis-
20 tinguished men and have been graduates of the Naval
21 Academy. They have been commanders of fleets and
22 squadrons and have held other high offices. Many
23 of the Ministers have continued in office from two
24 to three Cabinets.

25 The Minister of the Navy has not appeared

1 before the Diet any more often than the Minister of
2 War which has been infrequent.

3 The Ministry has eight bureaux for its
4 administration. Normally each is headed by a Rear
5 Admiral or Captain. They are: Naval Affairs Bureau,
6 Personnel Bureau, Education Bureau, Munitions Bureau,
7 Medical Bureau, Intendance Bureau, Armaments Bureau
8 and Legal Bureau.

9 The Naval Affairs Bureau, which is the most
10 important and of which much will be heard later, is
11 divided into sections:

12 Section I deals with:

13 Matters concerning naval armaments and
14 other matters concerning naval administration in
15 general;

16 The construction and organization of, and
17 service abroad or in warships, units, offices and
18 schools;

19 The organization and service of warships
20 and units;

21 Naval discipline and morale; and

22 Naval maneuvers, Naval reviews, ceremonies,
23 etiquette, uniforms and flags, warships and weapons
24 of war and other munitions in general, guarding and
25 defense.

1 The second section deals with matters con-
2 cerning national defense policy, international con-
3 ventions and personnel dispatched abroad.

4 The third section deals with matters con-
5 cerning the use of engines, construction aboard war-
6 ships, and the maintenance and preservation of war-
7 ships.

8 The fourth and last section deals with
9 matters concerning the dissemination of consciousness
10 relating to national defense, and matters concerning
11 the guidance of organization connected with naval
12 affairs.

13 Wherever it has been possible, Mr. Presi-
14 dent, we have produced for the Tribunal the English
15 translation as furnished to us by the Japanese Govern-
16 ment of these various Ordinances.

17 There is a Naval Affairs Dissemination
18 Department which is charged with the planning and
19 execution of naval publicity. Like other public
20 relations offices of the Ministries, this Department
21 has had its main function absorbed by the Bureau of
22 Information of the Cabinet.

23 The Chief of the Naval General Staff. It
24 is provided by the ordinance creating this office
25 that the Naval General Staff Office shall take charge

1 of all matters concerning national defense and the
2 use of armed strength. The Ordinance is exhibit 79
3 in the case.

4 The Ordinance further provides that there
5 shall be a Chief of the Naval General Staff office
6 who shall be personally appointed by the Emperor,
7 who shall be directly subordinate to the Emperor,
8 take part in the confidential affairs of the
9 Emperor's headquarters, and for control of the Naval
10 General Staff office.

11 Provision is also made for the appointment
12 of a Vice Chief who shall assist the Chief, super-
13 vise the Division and coordinate the affairs of the
14 Division.

15 The Ministry of Foreign Affairs in the
16 Japanese Government is more popularly known as the
17 Foreign Office. The Office of Minister of Foreign
18 Affairs was not established formally until 23 Decem-
19 ber 1885, and its present organization under Imperial
20 Ordinance is to be found in exhibit 76 in the case.

21 In addition to the general duties of the
22 Minister as set out in the general section of the
23 ministries, the Minister of Foreign Affairs under
24 Article I of the Basic Ordinance is charged with
25 the duties of:

1 "the execution of affairs relating to
2 foreign countries, the protection of trade and
3 commerce, and matters relating to Japanese abroad, and
4 shall supervise and control all diplomatic and con-
5 sular offices."

6 It is provided in the Basic Ordinance that

7 "The Minister of Foreign Affairs shall
8 direct and superivse the Japanese Ambassador Extra-
9 ordinary and Plenipotentiary to Manchoukuo in regard
10 to those affairs of the Kwantung Bureau which pertain
11 to external matters."

12 At the opening of the Diet the Minister
13 of Foreign Affairs makes an formal address. The
14 Prime Minister informs the Diet as to Empire affairs
15 generally, and the Minister of Foreign Affairs in-
16 forms the members with regard to international agree-
17 ments, commitments and treaties.

18 By reason of their long training and their
19 great experience, the Ministers of Foreign Affairs
20 have been powerful figures in the Cabinet and it is
21 an office which has often led to the post of Prime
22 Minister.

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1 As chief executive of the Ministry, the
2 Minister develops the foreign policy. Information
3 necessary for planning the national program is ob-
4 tained by the Bureaux of the Ministry and is formu-
5 lated in the deliberations of the joint conferences.
6 The Minister presides at these Conferences whose
7 members include the Vice Minister and the Bureau
8 Chiefs.

9 Under Article IV of the Ordinance estab-
10 lishing this Ministry, the bureaux are set up geo-
11 graphically and functionally.

12 First is the Geographic Bureaux. The
13 East Asia Bureau composed of three sections is con-
14 fined to China, Hongkong and Macao. The duties
15 include negotiations and revision of treaties.

16 The Europe and Asia Bureau -- the duties
17 of this bureau are the same as those set out above
18 but pertain only to America,

19 Then there has been the South Seas Bue
20 reau, which has charge of diplomatic affairs concern-
21 ing Thailand, the Philippine Islands, Indo China,
22 Burma, Malaya, North Borneo, the East Indies, Aus-
23 tralia, New Zealand, the other Oceanic Islands and
24 the Antarctic region.
25

1 The Functional Bureaux are in two parts,
2 a Bureau of Treaties and Convention. The functions
3 of this bureau are set out in Article VIII and com-
4 prise drafting and interpreting treaties, dealing
5 with extraterritorial rights and the administration
6 of all other foreign legal affairs, such as the
7 world conferences and the League of Nations.

8 Under the Department of Ministry, to be
9 found in Article IX, is the Intelligence Depart-
10 ment. Article IX creates this department as the
11 public relations office for the Ministry. Until
12 the creation of the Cabinet Bureau of Information
13 in September 1937, in which all agencies giving
14 out governmental information were centralized,
15 the Intelligence Department was the centre from
16 which information on all diplomatic affairs
17 emanated.

18 The departmental chief gave daily inter-
19 views to international newspaper correspondents
20 and the local press.

21 Direct interviews with the Minister him-
22 self were not a common practice in Japan with
23 either the foreign or local press. Foreign cor-
24 respondents often wrote short statements, submitted
25 them to the Minister for his signature and for his
approval and then published them.

1 consent and then published them.

2 Direct censorship of the press was not
3 a function of this Ministry but it did issue short
4 prohibitive statements to the correspondents from
5 time to time regarding its own news items.

6 Another department of this Ministry was
7 the Cultural Undertakings Department. This de-
8 partment concentrated its work entirely on cul-
9 tural activities in China. The first attempt to
10 organize propaganda for China originated in this
11 department. The volume and variety grew to large
12 proportions. The Department was later absorbed
13 by the Ministry of Greater East Asia.

14 The Secretariat is divided into six
15 sections and consists of a large staff, the sec-
16 tions being: The Personnel Section, The Protocol
17 Section, the Documents Section, the Accounts Sec-
18 tion, The Translation Section and the Telegraphic
19 Section.

20 The Foreign Service was one of the great
21 innovations made in Japan following the Restora-
22 tion. The members of the staff increased from
23 34 in 1871 to over 1000 in the early thirties. The
24 training of the officials, both diplomatic and con-
25 sular, is minute in law, international relations,

1 social institutions and languages.

2 The Ministry of Finance was one of the
3 original Ministries created at the time of the
4 promulgation of the Constitution.

5 By Imperial Ordinance No. 209, being
6 the Law of Finance, 1893, the Ministry is required
7 to "oversee all financial affairs of the State, in-
8 cluding the business concerning the balance account,
9 cash account, taxes, national loans, currency, de-
10 posit in the Treasury, safe-deposits in the Treas-
11 ury, banking and trust business, and the super-
12 vision of the financing of the municipal and
13 other local administrative organizations."

14 Now it has been pointed out that the
15 Bill of Appropriations, more commonly called the
16 Budget, is the most important responsibility of
17 the Minister. The drafting of all bills for
18 bond flotation and redemption and the setting of
19 tax rates and general interest rates are also his
20 responsibility,

21 There are extensive relations with the
22 great banks and other moneyed institutions. The
23 acquisition of conquered territory greatly in-
24 creased the duties arising out of money and bank-
25 ing. Guidance of the banking system established

1 in Manchuria has created a heavy responsibility.

2 The financial experience of nearly all
3 the Ministers has been wide and varied. With few
4 exceptions all have served for a number of years
5 within the Ministry. They have also held import-
6 ant positions in the government banks and in large
7 private industrial corporations.

8 The Minister of Finance always makes a
9 formal address on fiscal matters before the Diet.
10 The bureaux are divided into counts: Accounts Bu-
11 reau, Bureau of Taxation, Bureau of Fund Employ-
12 ment or Finance, and the Banking Bureau. Govern-
13 mental Institutions: Bank of Japan, Yokohama Specie
14 Bank, Hypothec Bank of Japan, the Industrial Bank
15 of Japan, and such other Private Banks as: the
16 First Bank, the Mitsubishi Bank, the Mitsui Bank,
17 and the Sumitomo Bank.

18 Then there is the National Savings En-
19 couragement Bureau and the Bureau of Monopoly.
20 The Government maintains four monopolies; the
21 Tobacco Monopoly, the Salt Monopoly, the Crude
22 Camphor and Camphor Oil Monopolies, and the Alco-
23 hol Monopoly. The remaining bureaux of the old
24 Ministry are the National Prosperity Bureau, the
25 Mint, the Customs, the Foreign Exchange Control

1 and the Deposit Funds Management Bureau.

2 The Ministry of Home Affairs, an
3 Imperial Organization setting up these and others,
4 is to be found in Exhibit No. 88 in this case, is
5 charged with the responsibility for domestic re-
6 lations and conditions within the interior. Be-
7 cause of its control of State Shinto the police
8 and fire departmental systems, together with the
9 conscription system, war-time price enforcement
10 and general elections, this Ministry reaches into
11 the family life of every subject in Japan, Ken,
12 Machi and Mura, together with all the implications
13 of the electoral system, empower this Ministry
14 with tremendous political advantages -- that is
15 to say, in the prefectures, towns and villages.
16 The Bureaux are: the Shrine Bureau, the Bureau
17 of Local Affairs, and the Police Bureau. The
18 administration of the last mentioned, the Police
19 System, is a heavy responsibility because of its
20 ramifications and varied duties.

21 The Civil Police are not to be confused
22 with the Kempei-tai, who are military police under
23 the Prvost Marshal EGeneral of the Army.

24 Although acting under the authority
25 of the Minister of Home Affairs the civil po-

1 policeman in Japan is considered by the Japanese
2 a representative of the Emperor. This fact
3 gives vitality to all his functions and his powers.
4 It brings about curious situations sometimes when
5 Army and Navy personnel are involved, for they
6 too have always considered themselves representa-
7 tives of the Emperor. Moreover, rank and offi-
8 cial prestige make very little difference when
9 the police take action.

10 As an officer of the Emperor, he is,
11 whether on his beat, directing traffic, or in
12 his home, the policeman is feared as well as re-
13 spected. When speaking to them citizens remove
14 their hats and bow deeply. They do not put on
15 their hats until the conversation is over and
16 they have bowed again in taking their most polite
17 leave.

18 Police stations are established in dis-
19 tricts which are determined geographical areas and
20 people for generations have come to the police
21 station to register complaints, present their
22 local grievances and give information of any un-
23 usual circumstance. Much of the power of the po-
24 lice in Japan comes from this age-old people to
25 patrolman custom.

1 In his district he has duties to per-
2 form other than strict policing. He is in charge
3 of: census taking, important civil surveys and
4 general inspection tours. These civil duties
5 add to his high prestige and power and citizens
6 of his district send him freshly cooked food and
7 rice or candies.

8 His sword is a token of dignity held
9 over from a long samurai past. He has, in the
10 larger cities, modern mechanical and electrical
11 equipment, such as radio, telephone and sirens.
12 Special instructions on the method of challenge
13 are given by Seki in Lectures on police duties
14 when he said: "(1) Decide whether or not a person
15 is suspicious from his external appearance, such
16 as his features, peculiar characteristics and be-
17 havior; (2) Ask the original starting point, des-
18 tination and nature of his business; 3 Ascertain
19 his domicile, residence, occupation, name and age;
20 (4) Ask questions on other points which do not
21 touch upon the main point of the case if either
22 the doubt is not cleared up or the suspicion is
23 strengthened; (5) Inspect his possessions with
24 his permission. Only after doing these things
25 is it to be decided whether or not the suspect

1 is to be accompanied to the police station."

2 Further there is added: "Not to permit
3 the destruction of proofs, not to permit escape,
4 and not to neglect the precautionary measure of
5 self-defense."

6 There is in this Ministry the Peace
7 Preservation Section. This section is concerned
8 with maintaining order in the country through rou-
9 tine and special investigations, such as are re-
10 quired by the Public Peace Police Law. Before
11 public meetings are held the organizers have to
12 clear both the purposes and speakers of the meet-
13 ing with the police. The police have the power
14 to stop speakers when they are indoctrinating the
15 audience with Left Wing doctrine, and, to close
16 the meeting. Public morals and public conduct
17 are supervised minutely by the police. All
18 places of amusement are inspected. Licensed
19 prostitution is controlled and protection afforded
20 to the Geisha system. And there is the Crime
21 Prevention Section, and it is only sufficient to
22 say that the crime rate is low in Japan and great
23 attention is paid to all suspects.

24 Then there is the Books or Publications
25 Section. This section is charged with censor-

1 ship of all books, magazines and newspapers. How-
2 ever, censorship bans are issued also by the Me-
3 tropolitan Police Board and by judges of the Dis-
4 trict Court.

5 Books and magazines are censored in
6 the manuscript form before publication and thus
7 there are few banned books in Japan. Foreign
8 publications are restricted generally at the
9 ports although some have been banned after they
10 have been in circulation for some period of time.

11 Newspapers are sent official warnings
12 as to what can or cannot be published or how much
13 of a situation or story at any time may appear
14 in print. For example, on the 3rd of September
15 1940 the warning was sent: "Nothing is to be men-
16 tioned of the coming to Japan, presence here or
17 movements of Heinrich Stahmer, a German Minister,
18 who will be at the German Embassy on a certain
19 mission." Forced apologies, fines, imprison-
20 ment, and closing down of newspapers are the re-
21 sults of any infringement.

22 Then there is the Economic Peace Pre-
23 servation Section. Its function is price con-
24 trol enforcement and black market control.

25 There are three highly important in-

1 stitutions attached to the Ministry, namely:

2 (a) The Metropolitan Police Force, which includes
3 a general headquarters, and the work of this De-
4 partment includes the Special Higher Police De-
5 partment; which corresponds to the American Fe-
6 deral Bureau of Investigation. Special in-
7 structions are issued on thought control; (b) The
8 Air Raid Defense General Headquarters, and (c), The
9 Police Training School.

10 Then there is the Ministry of Education,
11 Article XIV. The Meiji reformers founded a De-
12 partment of Education and an educational system
13 early in the Restoration after careful planning
14 and study of western forms and systems.

15 The Ministry with the exception of the
16 Schools of the Army and the Navy and a few spe-
17 cial others, is charged with the direction and
18 supervision of all educational matters, which in-
19 clude arts and sciences and religion. The author-
20 ization creating this Ministry is to be found in
21 Exhibit 91 in the case.

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1 Under the jurisdiction of the Ministry
2 also are scientific laboratories and observatories,
3 many institutes, libraries and councils whose in-
4 fluence reaches to all parts of the Empire.

5 It controls the national schools or those
6 of the central government and all higher institu-
7 tions of learning, such as the universities, col-
8 leges, technical colleges and the higher schools.

9 In the Bureau of Textbooks there is a
10 Textbook Committee in charge of the data and material
11 used in all the texts and manuals over which the
12 Ministry has complete authority. Members of the
13 Committee are from the Army and Navy, universities
14 and the building world. This complete control by
15 the central government over all important educational
16 affairs has enabled the authorities to inculcate the
17 younger generation with its own dogma and has been
18 one of the reasons why the Japanese have acquiesced
19 so easily in government policies.

20 The Imperial Ordinance on 10 January, 1938
21 established the Ministry of Welfare following an
22 investigation and report by the Cabinet Planning
23 Board.

24 The Ministry is charged with the responsi-
25 bility of "promoting the physical strength and wel-

1 fare of the nation" which involves the general and
2 special fields of health, sanitation, hygiene,
3 labour and social insurance.

4 In the formation of the Ministry of Wel-
5 fare the Ministry of Home Affairs lost the Bureau
6 of Public Hygiene and Social Welfare, reducing the
7 Home Ministry by two-fifths of its regular number
8 of personnel. The Ministry of Commerce and Industry
9 lost the section of labour hygiene administered by
10 the Bureau of Mines. The Ministry of Communications
11 lost some of its jurisdiction over post office life
12 insurance and annuities. The Ministry of Education
13 surrendered its duties relating to training and
14 sports outside the school system.

15 The Section of Housing under this Ministry
16 expanded rapidly during the war because of the
17 necessity of increased housing facilities in factory
18 areas.

19 In 1943, this Ministry of Communications
20 was merged with the Ministry of Railways. The new
21 Ministry is that of Transportation and Communications.
22 Although some bureaus and sections were eliminated
23 the essential services and functions have been re-
24 tained.

25 The old Ministry of Communications was

1 established in 1885 and its functions were widened
2 so that its authority comprised the post office,
3 the fields of aviation, shipbuilding, water trans-
4 portation and all matters of electricity including
5 the telephone, telegraph, radio, cable and beacon
6 services.

7 The Ministers' experience have nearly all
8 been in politics, although a few men in the last ten
9 Cabinets have had executive and business careers in
10 steamship or business corporations.

11 A department or section in government for
12 justice has been traditional for over a thousand
13 years in Japan. The Great Reform Measure of 649
14 A. D. established the first definite Ministry. In
15 the Tokugawa era the court system was greatly en-
16 larged. Laws and ordinances passed down to 1889
17 have given the Ministry its present structure.

18 The Minister of Justice is responsible
19 for the administration of civil and criminal law
20 and penal institutions. Supervising authority is
21 exercised over the procurators and judges.

22 Prosecuting and defending cases involving
23 the Imperial Family and the State are other important
24 duties of the Ministry.

25 The personnel of the Ministry includes

1 not only the District Court judges and the pro-
2 curators, but also those of the Court of Appeals
3 and the Supreme Court, and their personnel.

4 Almost without exception the Minister has
5 been either a Supreme Court Justice or a Procurator
6 General and has had long experience within the
7 Ministry. He appoints Judges and Procurators,
8 and whether they are promoted or not depends upon
9 his recommendation.

10 The Imperial Ordinance No, 137 of March
11 1926 created the Ministry of Commerce and Industry
12 as a separate Ministry. In 1943 it was abolished,
13 and its functions were transferred to the Ministry
14 of Munitions and the Ministry of Agriculture and
15 Commerce.

16 The Ministry had general jurisdiction of
17 industry and all industrial matters of supplies --
18 their processing, and their fabrication. It also
19 controlled the import and export trade of all com-
20 modities. The Patent Office also came under its
21 jurisdiction.

22 After the nationalization of railways in
23 1907, a Railway Board was created to operate and
24 manage the new State system.

25 By Imperial Ordinance No. 143 of 15 May,

1 1920, the Board was abolished and its function ab-
2 sorbed by the newly established Ministry of Railways.

3 The Ministry is responsible for the oper-
4 ation and management of the Imperial Government
5 Railways, and also the supervision of the private
6 railways, which include the private and municipal
7 trolley lines. In performing these duties the Min-
8 istry maintains electrical generating stations and
9 power plants and operates large ferry services and
10 a hotel system.

11 The Ministry is independent in its
12 finances from the State accounts because of the
13 provisions of the Imperial Railway Special Account
14 Law of 1909.

15 The appointment of the Minister has been
16 unusually free from politics and so has the entire
17 administration. The Ministry of Agriculture and
18 Forestry is the old Ministry now merged with some of
19 the bureaus of Ministry of Agriculture and Commerce.
20 This Ministry had authority over all matters relat-
21 ing to agriculture, forestry and fisheries.

22 The Ministry of Overseas Affairs was es-
23 tablished by Imperial Ordinance No. 152 of 10 June
24 1929, and is to be found in Exhibit 87 in the case.

25 Article I of the Ordinance provided that

1 the Ministry was to control all affairs relating to
2 the Chosen Governor General's Office, the Taiwan
3 Governor General's Office, the Kwantung Adminis-
4 tration Office and the South Seas Administration
5 Office. It also provided that the Ministry was
6 to supervise the operation of the two great corpor-
7 ations, the South Manchuria Railway Company, Ltd.,
8 and the Oriental Development Company, Ltd.

9 In the abovementioned areas the Ministry did
10 not have complete authority, for some matters were the
11 responsibility of the Ministries of War, of Finance,
12 of Communications and of Home Affairs.

13 In the major wartime reorganization of the
14 government, the Ministry was abolished and its func-
15 tions divided and transferred to the Cabinet and to
16 the Ministry of Home Affairs and some finally to the
17 Ministry of Greater East Asia. Constant political
18 changes have taken place in colonial administration
19 with a view to strengthening the government by making
20 the colonies feel that they are an integral part of
21 the Empire.

22 If I may, I would ask the Tribunal to
23 permit me to turn my attention at this stage to
24 war time changes in government administration.
25 First, there was the Ministry of Greater East Asia.

1 In September and October, 1942 a cabinet reorgan-
2 ization removed all matters pertaining to the
3 "reconstruction" of the Greater East Asia Co-
4 Prosperity Sphere from the Foreign Office and
5 placed them in the hands of the Minister of
6 Greater East Asia.

7 Article I of the Imperial Ordinance No.
8 707 of 1942 creating the Ministry, and which is to
9 be found in Exhibit 90 in the case, provides:
10 "The Greater East Asia Minister shall supervise
11 the operation of the Kwantung Bureau and of the
12 South Seas government office. He shall direct
13 also the work of diplomatic officials and consuls
14 residing in Greater East Asia."

15 In many respects the establishment of
16 this Ministry effective on 1 November, 1942, was
17 the most important single administrative change in
18 Japan within recent years.

19 The Government in announcing the creation
20 of the Ministry stated that it was to be a general
21 agency "for conducting administrative work covering
22 the field of politics, economy and culture within
23 the Greater East Asia Sphere, excepting Japan proper,
24 Chosen, Taiwan and Karafuto." However, all matters
25 of a purely diplomatic nature were left to the juris-

1 dictation of the Ministry of Foreign Affairs.

2 The administration of Greater East Asia
3 Affairs had previously been divided between the
4 Ministry of Foreign Affairs, the Ministry of Overseas
5 Affairs, the China Affairs Board and the Manchurian
6 Affairs Board.

7 The new Ministry reflected the confident
8 hope of the Government that Japanese conquests were
9 permanent and that the time had come for full and
10 complete exploitation of occupied territories. By
11 the formation of this Ministry, the Army deprived
12 the Foreign Ministry of any power it might have to
13 challenge Army policy in occupied territory.

14 As abovementioned, this point is made clear
15 in Article XIX of the Imperial Ordinance No. 707 of
16 1942 creating the Ministry, which provides that:
17 "For close cooperation with the Army and Navy, the
18 Greater East Asia Ministry will conduct affairs concerning
19 administration of the occupied areas within
20 the Greater East Asia Area."

21 The Ministry was originally organized
22 into four bureaus, but a fifth was added in December
23 of 1943.

24 The first was the Executive. This Bureau
25 had jurisdiction over all matters pertaining to the

1 adjustment of ministerial affairs, elaboration of
2 industrial and economic policies and the com-
3 putation of statistics.

4 The Manchurian Affairs Bureau. The Man-
5 churian Affairs Bureau had under its jurisdiction
6 matters pertaining to the formation of Manchurian
7 policies, the Kwantung Bureau, the Bureaus of
8 Finance, Trade, Industry, Commodities, Prices and
9 Communications relating to Manchukuo, the Southern
10 Manchurian Railway Company, the Manchurian Develop-
11 ment Company and other agencies interested in the
12 development of Manchukuo.

13 Then there was the China Affairs Bureau.
14 It was entrusted with the formation of policies in
15 the execution of administrative affairs concerning
16 China, the promotion of cultural enterprises,
17 finances, trade, agriculture, forestry, fisheries,
18 the North China Development Company, the Central
19 China Development Company and other activities of
20 a similar nature.

21 Then there was the Southern Regions
22 Affairs Bureau which had jurisdiction over general
23 affairs connected with the Southern Regions.
24 Included within its scope of operation was the
25 protection of Thailand and French Indo China, the

1 education of Japanese in the Southern Regions, the
2 administration of cultural enterprises, finance,
3 trade, agriculture, forestry, fisheries, communi-
4 cations and other similar activities in those areas.

5 And, lastly, the Industrial Bureau, which
6 was organized in December 1943 to take over certain
7 commercial affairs in Greater East Asia formerly
8 under the jurisdiction of the abolished Ministry
9 of Commerce and Industry.

10 The second important war time change in
11 governmental administration was the creation of a
12 Cabinet Advisory Council.

13 Legislation was enacted by way of Imperial
14 organization, being Exhibit 96 in this case, for the
15 setting up of a system of Cabinet Advisers at a level
16 somewhat lower than that of a Minister without port-
17 folio, although they were to be afforded the treat-
18 ment of officials of "Shinnin" rank and were appointed
19 by Imperial order. These officers were "to partici-
20 pate in matters of importance concerning the execution
21 of State affairs by the Prime Minister."

22 The legislation also provided for the
23 creation of a Wartime Economic Council within the
24 Cabinet, an Administrative Supervisory Council, and
25 a Planning Board. The first three bodies formed a

1 kind of interlocking directorate under the direct
2 supervision of the Premier.

3 The Cabinet Advisory Council appointed in
4 1943 was made up of seven leading industrial and
5 political figures. Late in November, 1943, the
6 Government announced the appointment of three addi-
7 tional members of the Cabinet Advisory Council,
8 raising the membership to ten. The three new
9 members were all important industrialists - experts
10 in their own fields.

11 The War-time Economic Council included all
12 Cabinet Advisers and also certain State Ministers to
13 be designated by the Premier, including the War and
14 Navy Ministers, and other Ministers concerned with
15 economic development.

16 The new Planning Board was composed of three
17 advisers, twenty investigators and ten Diet members
18 who were to attend to the administration of the con-
19 trol of natural resources.

20 The functions of the Board are set out in
21 Article I of the Imperial ordinance, being Exhibit
22 71 in the case:

23 "1. Drafting of plans concerning the
24 expansion and employment of the total national
25 resources in time of peace and war, and reporting

1 of such plans, together with reasons therefor, to
2 the Prime Minister.

3 The second function of this most important
4 Board was the "investigation of the merits of pro-
5 posals which are submitted by the Ministers to the
6 Cabinet Council and which have an important bearing
7 upon the expansion and employment of the total
8 national resources in time of peace and war, and
9 reporting together with its opinions to the Cabinet
10 through the Prime Minister.

11 "Reporting, together with its opinion, to
12 the Cabinet through the Prime Minister with reference
13 to the control of budget for important matters related
14 to the expansion and employment of the total national
15 resources in time of peace and war.

16 "The adjustment and co-ordination of affairs
17 of various government offices with regard to the making
18 and execution of a national mobilization plan.

19 "Matters concerning the making of a plan
20 for the utilization of the territory and matters
21 concerning the control of affairs of various govern-
22 ment offices as needed by the plan for the utiliza-
23 tion of the territory."

24 The next thing for consideration is the third
25 important wartime change in general administration of

1 Japan was the Munitions Ministry. A Cabinet Plan-
2 ning Board was established in 1937, which is Exhibit
3 89 in the case, to assume responsibility for the
4 expansion and mobilization of Japan's National
5 strength in the war with China. It drafted plans
6 for Japan's mobilization and presented them to the
7 Cabinet for its consideration.

8 In order to co-ordinate the plans of the
9 Cabinet Planning Board with the various governmental
10 Ministries, Control Associations were established by
11 the end of 1941 for each important industry.

12 These Control Associations were under the
13 supervision of the Ministry of Commerce and Industry
14 and were directed by the former heads of the leading
15 certels of big business houses. The programme
16 schedules of production in Japan proper, in colonial
17 territories and in occupied territory were first
18 drawn up by the Cabinet Planning Board and, after
19 their approval by the Cabinet, were transmitted to
20 the Control Associations.

21 However, the demands of the war for increased
22 production resulted in competition among the various
23 Control Associations for raw materials and other
24 supplies.

25 Consequently, more complete control

1 measures had to be inaugurated by the Government at
2 the insistence of the Army leaders.

3 The result was finally achieved in the autumn
4 of 1943 through the establishment of a Ministry of
5 Munitions and the inauguration of widespread adminis-
6 trative changes within the Government itself.

7 THE PRESIDENT: Brigadier Nolan, you have
8 given us a most interesting account of the Govern-
9 ment of Japan but I think we are all wondering
10 whether we can regard this as a concise statement
11 within the meaning of our order. I do not know
12 how much you have to tell us, but it may be that
13 you could shorten it without impairing its value.
14 I leave it in your hands.

15 We adjourn now until thirty minutes after
16 one o'clock tomorrow.

17 (Whereupon, at 1602, an adjourn-
18 ment was taken until Friday, 14 June, 1946
19 at 1330.)
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